



An  
Bord  
Pleanála

## Inspector's Report ABP-313467-22

<b>Development</b>	Subdivision of a corner site and the construction of a house with garden room to rear.
<b>Location</b>	8 Castlefield Park, Clonsilla, Dublin 15, D15 H67E.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	FW22A/0026.
<b>Applicant</b>	Mykola Zahorskyy & Larysa Zahorska.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party v Refusal of Permission
<b>Appellant</b>	Mykola Zahorskyy & Larysa Zahorska.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	12 <sup>th</sup> October 2022
<b>Inspector</b>	Enda Duignan

## **1.0 Site Location and Description**

- 1.1.** The address of the appeal site is No. 8 Castlefield Park, Clonsilla, Dublin 15. No. 8 Castlefield Park is a corner site which has a frontage to Castlefield Park to the east and to the south. The site is located opposite an area of public open space, c. 100m to the north of the junction of Castlefield Park and Clonsilla Road. The site comprises a double storey detached dwelling with a single storey element to the rear. The dwelling is served by a generous area of amenity space to its side and rear and car parking is provided within its front setback. A single storey outbuilding is also located in the south-western corner of the site. The appeal site has a stated area of c. 0.059ha.
- 1.2.** In terms of the site surrounds, the site is located within established residential area which is typically characterised by detached double storey dwellings of a similar architectural form. The site is located to the south of No. 9 Castlefield Park and to the east of No. 28 Castlefield Park. As noted, an area of public open space is located to the east of the site on the opposite side of Castlefield Park.

## **2.0 Proposed Development**

Planning permission is sought for the subdivision of the existing site and the construction of a double storey detached dwelling within the side amenity space of the existing site. The proposed dwelling will comprise a total of 4 no. bedrooms and has a stated floor area of c. 110.4sq.m.

- 2.1.** The proposed dwelling will have a gable sided pitched roof form with a maximum height of c. 7.6m. Materials and finishes for the proposed dwelling will comprise a combination of brick and render for the principal elevations with a tiled roof.
- 2.2.** At application stage, the proposal included the construction of a detached habitable room within the south-western corner of the site which comprised a home office/gym, toilet and shed. The building had a flat roof form with a render finish.

- 2.3.** The dwelling is proposed to be accessed via a new vehicular entrance measuring c. 3m wide. The entrance is located in the south-eastern corner of the site and will lead to a car parking area within the front setback.
- 2.4.** A landscaped garden is proposed to be provided to the rear (west) of the dwelling and will be directly accessible from the ground floor kitchen/dining room. The proposal also includes works to the existing southern boundary wall and the provision of a new boundary between the existing and proposed dwellings.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Fingal County Council refused planning permission for the development for the following 2 no. reasons:

1. "The proposed development would not comply with Objective DMS24 of the Fingal Development Plan 2017-2023, specifically Table 12.3 relating to minimum floor areas, room sizes and widths. The proposed development would fail to provide a satisfactory standard of amenity for future residents, would materially contravene the RS zoning objective for the area and Objective DMS24 of the Fingal Development Plan 2017-2023, would set a poor precedent for other similar development and would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development by reason of its proximity to existing Irish Water infrastructure would compromise the functioning of such infrastructure, endanger public health and would therefore be contrary to the proper planning and sustainable development of the area."

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

##### **3.2.1. Planning Report**

The Planning Authority in their assessment of the application indicate that the principle of the proposed development is acceptable in this instance having regard to the applicable zoning objective. In terms of design and visual amenity, some concerns are

raised with respect to the dwelling's height and the design of the roof which they note should be consistent with that of adjoining properties.

Concerns are raised with the internal floor area provided for a 4 no. bedroom dwelling and it is highlighted that the proposed development would fail to offer a satisfactory standard of residential amenity for future occupants. On this basis, a refusal of permission is recommended given the proposal is contrary to the applicable policy objective and by extension, the zoning objective. Concerns are also highlighted with respect to the private open space provision and bin storage.

A second reason for refusal is included due to the potential impact of the proposal on Irish Water infrastructure which is stated as being located proximate to the southern site boundary.

A refusal of permission was recommended within the Planning Report for 2 no. reasons.

### 3.2.2. Other Technical Reports

Transportation Planning Section: Report received stating no objection subject to compliance with a condition.

Water Services Department: Report received recommending additional information. The Applicant was requested to submit an acceptable SuDS based surface water drainage proposal, including design calculations, following the principles outlined in the GDSDS (Greater Dublin Strategic Drainage Study), CIRIA C753 (SuDS Manual) and the FCC Blue/Green guidance document.

Parks and Green Infrastructure Department: Report received stating no objection subject to compliance with a condition.

### 3.2.3. Prescribed Bodies

Irish Water. Report received recommending additional information. This related to the presence of existing IW infrastructure within close proximity of the appeal site. The Applicant was requested to either ascertain the exact location of these services and amend the proposal accordingly, or alternatively engage with Irish Water Diversions in respect of the infrastructure and/or requirement to enter into a diversion agreement with Irish Water and submit the outcome of this engagement as evidence to the Planning Authority.

## **4.0 Planning History**

### **4.1. Appeal Site**

**FW13A/0047:** Planning permission granted by the Planning Authority in August, 2013 for development consisting of:

- Widening of existing vehicular access.
- A new porch with apex roof to front of dwelling.
- Part internal remodelling.
- New ground floor single storey extension to the rear of dwelling with a lean-to roof incorporating 2 no. velux windows.
- A new first floor extension to the rear of dwelling.
- A new window to existing en-suite at first floor (South) side elevation.

It would appear that these works have been carried out on site.

## **5.0 Policy and Context**

### **5.1. National Policy**

#### **5.1.1. Project Ireland 2040 National Planning Framework (NPF) Local Policy**

National Policy Objective 35 of the NPF seeks to “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. Local Policy**

#### **5.2.1. Fingal County Development Plan, 2017-2023 (CDP)**

The site is within an area zoned 'RS' of the Fingal County Development Plan (CDP), 2017-2023, the objective of which is 'to provide for residential development and to protect and improve residential amenity'. All lands within the immediate surrounds of the subject site are also zoned 'RS'.

The following relevant policy objectives are noted:

**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.

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

**DMS24:** Require that new residential units comply with or exceed the minimum standards as set out in Tables 12.1, 12.2 and 12.3.

**Objective DMS28:** A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy.

**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.

**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 DMS40:** New corner site development shall have regard to:

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- The existing building line and respond to the roof profile of adjoining dwellings.
- The character of adjacent dwellings and create a sense of harmony.
- The provision of dual frontage development in order to avoid blank facades and maximise surveillance of the public domain.
- Side/gable and rear access/maintenance space.

- Level of visual harmony, including external finishes and colours.

**DMS87:** Relates to minimum open space provision for dwelling houses.

### **5.3. Natural Heritage Designations**

5.3.1. None.

### **5.4. EIA Screening**

5.4.1. Having regard to the nature and scale the development which consists of the construction of a single house in a suburban location, 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 main points made can be summarised as follows:

- In response to Refusal Reason 1, the Applicant has revised the plans with increased floor areas to comply with Objective DMS24 of the current CDP (Table 12.1 & 12.3). It is stated that the proposal has been modified from a 2 storey, 4 bedroom, 7 person dwelling to a 2 storey, 4 bedroom, 5 person dwelling.
- With respect to Refusal Reason 2, it is stated that there is a lot of structural work that has been carried out in close proximity (less than 3m) to the existing Irish Water Infrastructure. Examples include the block shed in the rear garden of No. 8 Castlefield Park, the boundary wall of No. 8 Castlefield Park, existing ESB substations and the front boundary walls of a number of properties to the west of the appeal site.
- Given the extent of permitted works, it is contended that this should not be a reason to reject the current proposal. It is stated that any perceived future maintenance access by Irish Water is hindered by the very fact the mains line in question straddles along existing boundaries and the garden boundary wall

of the appeal site. It is noted that access to the infrastructure can be provided from the existing footpath or road.

- The Appeal submission notes that:
  - The proposed development is within the client's private curtilage.
  - The Applicant was not informed at the time of purchase of the property that further development will be highly restricted due to the proximity to Irish Water Public Mains.
  - As a compromise, it is stated that the proposed garden room has been removed from the proposal. However, they highlight that they can still build an exempt from planning garden room structure in close proximity to the boundary wall similar to the existing on-site condition.
- In support of the appeal submission, a cover letter has been enclosed from the Applicants outlining the justification for the proposal. The appeal also includes revised application drawings (including internal revisions, the omission of the garden room and an amendment to the site boundary), a sketch showing alternative foundation design and a Drawing No. STD-WW-05: Typical Service Layout Indicating Separation Distances from Wastewater Infrastructure Standard Details.

## **6.2. Planning Authority Response**

- 6.2.1. Response received dated 24<sup>th</sup> May 2022 which notes that the Planning Authority has no further comment to make on the application. In the event of a grant of permission, it is requested that provision be made in the determination for applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

## **6.3. Observations**

None.

## **6.4. Further Responses**

None sought.



## **7.0 Assessment**

The main issues are those raised in the Planning Report and consequent refusal reason and the Appellant's grounds for appeal. Overall, I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Irish Water Infrastructure
- Residential Amenity & Open Space
- Design and Visual Amenity
- Appropriate Assessment

### **7.1. Principle of Development**

The proposal seeks planning consent for the construction of a new double storey detached dwelling within the side amenity space of the existing dwelling on site. I note the site is located on lands zoned 'RS' of the Fingal County Development Plan (CDP), 2017-2023, the objective of which is 'to provide for residential development and to protect and improve residential amenity'. Residential development is identified as a permitted in principle use on lands zoned 'RS'. Having regard to the pattern of development in the surrounding area and the applicable zoning designation, I am satisfied that the principle of a new dwelling at this location is acceptable.

### **7.2. Irish Water Infrastructure**

- 7.2.1. I note a report is on the planning file from Irish Water (IW), whereby additional information was recommended due to the presence and proximity of existing IW infrastructure relative to the site, including an existing 225mm foul sewer in close proximity to the southern boundary wall and an existing 150mm water mains. In instances such as this, the IW report notes that a minimum clear distance of 3m must be maintained between these services and the proposed development as per the IW standard details and Codes of Practice. As the house was to be constructed up to the southern site boundary, it was not clear to the Planning Authority whether a separation distance of 3m was achievable or if it would be possible to redesign the house to

accommodate same. Similarly, the implications of a diversion on the proposed development were not clear to the Planning Authority. On this basis, a refusal of planning permission was recommended.

- 7.2.2. In support of the appeal, the Applicant has submitted a proposed block plan (Drawing No. 005) showing the indicative location of the existing IW infrastructure relative to the appeal site. The proposed block plan shows the existing 225mm foul sewer pipe within the centre of the existing footpath which runs along the full length of the southern site boundary. The existing 150mm water mains is located further to the south of this foul sewer pipe, partially within the existing grassed area between the footpath and the public road. A minimum separation distance of c. 1.3m is provided between the existing boundary wall and the 225mm foul sewer pipe (i.e. at the location of proposed dwelling).
- 7.2.3. I note that the appeal submission refers to the presence of existing built form located within this close proximity of the IW Infrastructure, including the boundary wall of the appeal site and an existing store room/shed which is located within the south-western corner of the site. Reference was also made to existing boundary walls located further to the west of the appeal site which were similarly sited in proximity of the public sewer.
- 7.2.4. Irish Water did not recommend a refusal of the planning application in this instance. The Applicant was requested to either amend the proposals to achieve a minimum 3m setback or alternatively engage with IW Diversions in respect of the infrastructure and/or requirement to enter into a diversion agreement. I acknowledge that there are instances where it is possible to build near an IW asset, within the minimum separation distances as defined within IW standard details and Codes of Practice. In instances such as this, Applicants are typically required to engage directly with IW over the acceptability of the proposal. If it is determined that a diversion of an IW asset is required to facilitate a development, an Applicant is then required to enter into a Diversion Agreement with IW prior to any works commencing on site. I note that in accordance with Irish Water Connections Charging Policy, an Applicant is typically liable for all costs associated with diverting or altering Irish Water's water/wastewater

assets. Given the ambiguity over whether it is feasible to build near the existing IW asset (as currently proposed) or whether a diversion agreement would be required and whether this diversion agreement would be acceptable/agreeable to both parties, I consider the proposed development to be premature pending an agreement being in place and I do not consider it appropriate for this to be agreed by way of condition. Whilst I acknowledge that the Applicant was not afforded the opportunity to engage with IW throughout the application process, the proposed development which is the subject of this planning appeal is considered to be prejudicial to public health in its current form and I recommend that planning permission be refused for the proposed development.

### **7.3. Residential Amenity**

- 7.3.1. The Planning Authority in their assessment of the application indicated that the proposed development would not accord with Objective DMS24 of the current CDP given the internal floor space provided. It was contended that the proposal would fail to offer a satisfactory standard of residential amenity for its future occupants and a refusal of planning permission was recommended. In response to the Planning Authority's concerns, the appeal submission indicates that the plans have been revised to comply with Objective DMS24 of the current CDP (Table 12.1) and the proposal has been modified from a 2 storey, 4 bedroom, 7 person dwelling to a 2 storey, 4 bedroom, 5 person dwelling. I note that the footprint of the dwelling does not appear to have been amended or modified and revisions appear to relate only to the provision of 2 no. single beds in Bedroom Nos. 1 & 2 in lieu of double beds. Notwithstanding this, I am satisfied that the proposed development would provide a good standard of amenity to its future occupants and the proposal can now be considered to be in compliance with the standards set out in Table 12.1 and 12.3 of the current CDP.
- 7.3.2. In terms of the site surrounds, I note the proposed dwelling is located to the east of No. 28 Castlefield Park. A minimum separation distance of c. 13m is proposed to be provided between the rear façade of the dwelling to the western (rear) site boundary. Having regard to the separation distances provided and the siting of the proposed

dwelling relative to No. 28 Castlefield Park (i.e. facing the front of this property), I am satisfied that no overlooking issues arise and the proposal is therefore acceptable having regard to the residential amenity of the surrounding area. I also note that the Planning Authority has raised no concerns with respect to this aspect of the proposed development. In terms of the existing dwelling on site, I note the dwelling does not extend beyond the rear building line of the existing dwelling. I also note that there are no windows on the southern elevation of the existing dwelling. Having regard to the overall scale, height and form of the proposed dwelling and its siting relative to the existing dwelling on site, the proposed development will not adversely impact the amenity of existing property by reason of overlooking, overshadowing or by being visually overbearing and is therefore acceptable having regard to the residential amenity of the surrounding area.

#### **7.4. Design & Visual Amenity**

- 7.4.1. Given the nature of the proposed development, regard must be given to Objective DMS40 of the current CDP which provides policy guidance for new corner site development. Castlefield Park is an established residential area, typically comprising of detached double storey dwellings of a similar architectural style and form. In terms of the established building line, I note that the front building line of the proposed dwelling matches that of the existing dwelling on site. Although the side building line of the proposed dwelling extends beyond the established building line of properties to the west, I note that the Planning Authority raised no concerns with this aspect of the proposal. I would concur with the Planning Authority, and I am satisfied that proposal does not detract from the existing streetscape character.
- 7.4.2. Objective DMS40 also highlights that proposals for corner site development should respond to the roof profile of adjoining dwellings. In this instance, a gable sided pitch roof dwelling is proposed. This represents a departure from the prevailing neighbourhood character, whereby dwellings within the surrounding area generally have hipped roof profiles. It would appear from reviewing the section diagrams that this design feature has been included to achieve generous floor to ceiling heights within Bedroom Nos. 1 & 2. Given the visual prominence of the appeal site, whereby

the site it is located on the corner of Castlefield Park, I have concerns with respect to this aspect of the proposal's design. Should a future application be forthcoming on the appeal site, I recommend a modified design which incorporates a hipped roof profile in lieu of the gable currently proposed so that its design better responds to the prevailing neighbourhood character as per the requirements of Objective DMS40 of the current CDP.

- 7.4.3. I also note that Objective DMS40 seeks to encourage the provision of dual frontage development in order to avoid blank facades and maximise surveillance of the public domain. The proposal in its current form fails to satisfy this policy requirement, given the southern façade of the proposed dwelling lacks fenestration. Given the orientation of the site, the provision of first floor level windows on the southern façade of the dwelling can improve solar access to the dwelling and also provide opportunities for passive surveillance of the public domain to the south of the appeal site. Should a future application be forthcoming on the appeal site, consideration should be given to the provision of first floor level windows on the southern elevation of the dwelling as per the requirements of Objective DMS40 of the current CDP. The incorporation of fenestration would also assist in articulating this façade given it currently lacks visual interest.

## **7.5. Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development, a dwelling on a serviced site, and to the nature of the receiving environment, with no direct hydrological or ecological pathway to any European site, 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

## **8.0 Recommendation**

I recommend that the planning application be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. The proposed development, by reason of its proximity to existing Irish Water assets, would compromise the functioning of such assets, would be prejudicial to public health and would therefore be contrary to the proper planning and sustainable development of the area.

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Enda Duignan  
Planning Inspector

7/11/2022