

Inspector's Report ABP-314266-22

Development Conversion of the attic area to a

storeroom to include realignment of the main hipped roof to form a gable roof, a proposed dormer window to the rear roof surface and 2 flat roof windows to

the front roof surface.

Location No. 51 Villa Park Gardens, Navan

Road, Dublin 7, D07 XO5K.

Planning Authority Dublin City Council.

Planning Authority Reg. Ref. 3974/22.

Applicant(s) Fergal Keenan.

Type of Application Planning Permission.

Planning Authority Decision Grant.

Type of Appeal First Party.

Appellant(s) Fergal Keenan.

Observer(s) None.

Date of Site Inspection 4th day of November, 2022.

Inspector Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. No. 51 Villa Park Gardens, the appeal site has a stated 375m² area, and it is situated on the western side of Villa Park Gardens, c323m via Villa Park Road to the north west of Blackhorse Avenue, as the bird would fly, in the residential scheme of Villa Park. The site is situated 245m to the north of Phoenix Park and 136m to the south of the Navan Road, as the bird would fly, in the Dublin suburban area of Ashtown, which is situated just over 5.5km to the north west of Dublin city centre.
- 1.2. The site contains a 2-storey brick semi-detached dwelling that dates to the mid-20th Century that contains a converted single storey side which projects to the front building line and incorporates a front porch and a single storey extension to the rear. The front garden area at some point in time has been mainly paved over to accommodate off-street car parking. A modest pocket of front soft landscaping remains and there is a bin store located on the southern side front boundary. The dwelling addresses a pocket of green space that is bound on four sides by estate roads. To the rear there is a single storey extension and the rear boundary the playing pitches of Belvedere Sports Grounds.
- 1.3. The immediate setting is characterised by similar two storey semi-detached dwellings that have since their construction in the mid-20th Century been much altered and added to.

2.0 **Proposed Development**

- 2.1. Planning permission sought for conversion of the attic area to a storeroom to include realignment of the main hipped roof to form a gable roof, a proposed dormer window to the rear roof surface and 2 no. flat roof windows to the front roof surface.
- 2.2. According to the Planning Application Form submitted with this application No. 51 Villa Park Gardens would retain 149m²; the new floor area is given as 21.5m², the total floor area of new and retained is given as 170.5m² and the extensions to the subject property exempt or not is given as 58.9m².

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 8th day of July, 2022, the planning authority decided to **grant** permission for the development subject to 9 no. conditions. Of relevance to the grounds of appeal are the requirements of the following conditions:

Condition No. 2:

"A development contribution in the sum of €2,927.31 shall be paid to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority."

Condition No. 3:

"Development shall not commence until revised plans, drawings and particulars showing the following amendments have been submitted to, and agreed in writing with, the planning authority:

a) The gabled roof shall be omitted and replaced with a side dormer for the purpose of providing head height to the staircase. This dormer shall have a hipped or apex type roof, which shall not exceed the ridge height of the main roof. Any window to the dormer projection shall be obscure glazed.

b) The rear dormer shall be reduced in extent as far as necessary to ensure that it

does not project above or beyond the area occupied by the side dormer and remaining

hipped roof. The applicant should note that this may require reconfiguration of the

internal layout at attic level.

Reason: To ensure that the development is not out of character with the surrounding

area."

Condition No. 4:

"The dormer(s) shall be clad in slates/tiles to match the cladding of the existing roof.

Reason: In the interest of visual amenity."

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The Planning Officers report is the basis of the Planning Authority's decision. This

report provided a description of the site, the site's planning history, the reports

received, and development plan provisions. It was considered that the principle of

development was acceptable, but concerns were raised in relation to the changes to

the roof structure and the impact these would have on the symmetry of the roof

structure of the semi-detached pair. Subject to amendments to the roof structure that

could be achieved by way of condition it was considered that proposal would not

seriously injure the residential or visual amenities of the area. A grant of permission

was recommended, subject to safeguards.

3.2.2. Other Technical Reports

Drainage: No objection, subject to safeguards.

Prescribed Bodies 3.3.

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. None.

4.0 Planning History

4.1. Site:

P.A. Ref. No. 2149/10: Permission was **granted** subject to conditions for demolition of garage and rear extension, alterations and additions to dwelling including construction of an extension to the front, rear, and side together with all associated site works and services.

P.A. Ref. No. WEB1133/09: Permission was **granted** subject to conditions for demolition of single storey rear extension, outhouse and garage, construction of a wrap around extension, widening of existing entrance and extended driveway to front garden.

5.0 **Policy Context**

5.1. Development Plan

- 5.1.1. The Dublin City Development Plan, 2022-2028, came into effect on the 14th day of December, 2022, under which the site is zoned 'Z1 Sustainable Residential Neighbourhoods'.
- 5.1.2. Chapter 14 sets out the Land Use Zonings.
- 5.1.3. Section 14.7.1 of the Development Plan in relation to 'Z1' zoned land states that the land use objective is: "to protect, provide and improve residential amenities" and that the vision is: "for residential development in the city is one where a wide range of high quality accommodation is available within sustainable communities, where residents are within easy reach of open space and amenities as well as facilities such as shops, education, leisure and community services".
- 5.1.4. Section 15.5.3 of the Development Plan deals with alterations and extensions. It sets out that works of alteration and extension should be integrated with the surrounding area, ensuring that the quality of the townscape character of buildings and areas is retained and enhanced, and environmental performance and accessibility of the existing building stock improved.

- 5.1.5. It further sets out that: "alterations and extensions will be sensitively designed and detailed to respect the character of the existing building, its context, and the amenity of adjoining occupiers. In particular, alterations and extensions should:
 - Respect any existing uniformity of the street, together with significant patterns, rhythms, or groupings of buildings.
 - Not result in the loss of, obscure, or otherwise detract from, architectural features which contribute to the quality of the existing building.
 - Retain characteristic townscape spaces or gaps between buildings.
 - Not involve the infilling, enclosure, or harmful alteration of front lightwells.
 - Incorporate a high standard of thermal performance and appropriate sustainable design features."
- 5.1.6. Volume 2 Appendix 18 of the Development Plan provides detailed guidance on side and rear extensions as well as dormer extensions at roof level.
 - 5.2. Dublin City Council Development Contribution Scheme, 2020-2023.
- 5.2.1. Section 1 of the scheme states that: "Sub-section (1) of Section 48 of the Planning and Development Act 2000 as amended, enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority, and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities)".
- 5.2.2. Section 9 of the scheme sets out the contributions to be paid.
- 5.2.3. The current amount of contribution for residential development under the scheme is given as €113.82 per square meter.
- 5.2.4. Section 11 of the scheme which sets out the exemptions states: "the first 40sq metres of extensions to a residential development (subsequent extensions or extensions over and above 40 square metres will be charged at the residential rate per square metre)".
- 5.2.5. Section 20 of the scheme states that: "an appeal may be brought to the Board where the applicant for planning permission under Section 34 of the Act considers that the

terms of the Scheme have not been properly applied in respect of any conditions laid down by the Council.

5.3. Natural Heritage Designations

5.3.1. The appeal site is not located in or does it adjoin a European Site. There is a proposed Natural Heritage Area (NHA) located c1.06km to the north (Royal Canal pNHA (Site Code: 001206)). There are no watercourses at or near the site. The site is located c5.78km to the west of South Dublin Bay & River Tolka Estuary SPA(Site Code: 004024) as the bird would fly.

5.4. EIA Screening

5.4.1. Having regard to the nature, scale, and extent of the development for which permission is sought, the site location within an established built-up urban area which is served by public infrastructure, the nature of the receiving environment and the existing pattern of residential development in the vicinity, and the separation distance from the nearest sensitive 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

- 6.1.1. The grounds of appeal can be summarised as follows:
 - This appeal relates to Condition No. 2; 3(a), (b); and 4 of the Planning Authority's notification order.
 - In calculating the financial contribution it would appear that the extensions from a previous application on the site, P.A. 2149/10 has been included. That is to say that the existing extension of 55m² is included, and retrospective financial contribution fees can not be applied.
 - Non-habitable floor space is not subject to a development contribution.

- A derogation was granted in respect of the development contribution conditioned under P.A. Ref. No. 2149/10 as this application included the demolition of 29.4m².
- The 14.12m² attic space already exists.
- It would appear that the 29.3m² which is used to calculate the €2,927 financial contribution is made up of 15m² from the previous extension when demolition is considered and the 14.12m² attic space.
- Under P.A. Ref. No. 4527/17 the total extension was 56m² with 20m² comprising
 of attic space, yet no development contribution was applied.
- In relation to Condition No. 3, there is no explanation given in the Planning Officers report as to why the changes to the roof space are required.
- P.A. Ref. No. 3783/22 included a Dutch style hip gable and was permitted at No. 48 Villa Park.
- The requirements of Condition No. 3 (a) and (b) restrict their right to develop in a manner which was not applied to a neighbouring property and is therefore prejudicial.
- The Board in appeal case ABP- PL29N.24717 permitted a full gable to be built as part of a development on this same estate.
- The amendments required would result in a much-reduced attic conversion.
- An overview of planning history relating to permitted gables within the wider area are referred to.
- In relation to Condition No. 4 permission was granted under P.A. Ref. No. WEB1167/20 for a rear dormer to be zinc clad.
- The provision of slates and tiles to a rear dormer should be disallowed.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority's response can be summarised as follows:
 - The first 40m² of extensions are exempt for the payment of Section 48 Development Contributions.
 - Extensions include dormers which increase the floor area of a property.

- It would appear that the Council erred in not applying a Section 48 Development Contribution under the grant of permission P.A. Ref. No. 2149/10.
- The Planning Authority has correctly calculated the Section 48 Development Contribution applicable.
- The Board is asked to uphold its decision notification as issued.

6.3. Observations

6.3.1. None.

6.4. Further Responses

6.4.1. The appellants further response raises concern that the Planning Authority in their response to the grounds of appeal have provided no clarity on the calculations upon which the sum of €2,927.31 was derived and considers that no account has been taken of the demolition allowance of 29.4m² nor is there any provision for retrospective contributions to be applied to development already constructed. It is concluded that the contribution payment sought is excessive and has not been correctly calculated by the Planning Authority.

7.0 Assessment

7.1. Overview

- 7.1.1. I have examined all the documentation before me, including inter alia, the Planner's Report of the Planning Authority, the appeal submission, the observer's submission, and I have visited the site and its environs. This is an appeal against Condition No. 2; 3(a), (b); and 4 of the decision notification to grant permission, which issued from the Planning Authority 8th day of July, 2022.
- 7.1.2. In this regard, I consider it is appropriate that the appeal should be confined to the aforementioned conditions only and I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted and that it would be appropriate to use the provisions of Section 139 of the Planning & Development Act, 2000, as amended, in this case.

7.1.3. I therefore propose to deal with each of the aforementioned conditions in turn in my assessment below.

7.2. Condition No. 2

- 7.2.1. This condition requires the applicant to pay a development contribution in the sum of €2,927.31 to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme.
- 7.2.2. It also sets out that the payment is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly.
- 7.2.3. It further provides for phased payment of the contribution with the agreement of the Council prior to any commencement of development. The given reason for this contribution reads: "it is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority."
- 7.2.4. The appellant considers that the sum to be paid is excessive through to it has not been correctly calculated.
- 7.2.5. On the other hand, the Planning Authority sets out in their response to the appeal that they have correctly calculated the contribution to be paid, having had regard to the planning history of the site. They therefore seek that the Board retains Condition No. 2.
- 7.2.6. I have set out under Section 5.2 of my report above the applicable development contribution scheme together with sections relevant to the development sought as well as the matters raised by the First Party in their appeal submission to the Board.
- 7.2.7. I also note that previous to this application permission was granted for three developments to the host dwelling of No. 51 Villa Park Gardens which are of relevance

- in the calculation of any development contribution to be paid from the implementation of the proposed development sought under this application.
- 7.2.8. Firstly, planning permission was granted on the 26th day of August, 2009, for alterations, additions and other development works to the host dwelling to which this application relates (Note: P.A. Ref. No. WEB1133/09). This development was not implemented.
- 7.2.9. On the 29th day of March, 2010, under P.A. Ref. No. 2149/10 planning permission was granted for a development comprising of the demolition of a garage and rear extension, internal and external alterations, construction of new ground floor extension to front, rear and side of original semi-detached dwelling, services connections, solar panels, alterations to road access, new side window, rooflights, external insulation and all associated site works.
- 7.2.10. The planning application form for this previous development application permitted and implemented on site indicated that the existing floor area of buildings to be retained within the site would equate to 88.8m²; the floor area of new buildings would equate to 61.8m²; the total floor area to be demolished is given as 29.4m² and it is stated that the total floor area, both new and retained would equate to 150.6m². The drawings submitted with this application show that the demolition floor area relates to a garage structure and boiler. These structures did not form part of the habitable floor area of the host dwelling to which this application related.
- 7.2.11. The planning application form accompanying this application sets out that the gross floor area of buildings to be retained on site is 149m²; the new floor area is 21.5m²; as well as the resulting new and retained floor area would be 170.5m².
- 7.2.12. Section 11 of the Dublin City Council Development Contribution Scheme, 2020-2023, sets out in relation to exemptions from the payment of development contributions for residential developments is the first 40m². It states that: "to a residential development (subsequent extensions or extensions over and above 40 square metres will be charged at the residential rate per square metre").
- 7.2.13. The current contribution rate for residential development is €113.82 per square meter under the scheme and the basis for the payment of this contribution I have set out under Section 5.2.1 above.

- 7.2.14. In summary it is considered reasonable that a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority, and that is provided, or that it is intended will be provided, by or on behalf of a local authority as provided for under Sub-section (1) of Section 48 of the Planning and Development Act 2000, as amended, is paid.
- 7.2.15. The scheme as set out only provides an exemption for the first 40m² of new residential floor area to existing dwellings.
- 7.2.16. The Planning Authority acknowledged that in error the grant of permission for P.A. Ref. No. 2149/10 in error omitted a condition for the payment of Section 48 despite such a development at the time requiring the payment of the same as the development exceeded the floor area for exemptions for residential development at that time.
- 7.2.17. In calculating the contribution sum payable under Condition No. 2 it would not appear that the Planning Authority are requiring retrospective financial contributions for this error but the new additional floor area that would arise from the development sought under this application.
- 7.2.18. I also note that the building floor area of 149m² is to be retained. Whereas the floor area of the host dwelling at the time of the grant of permission P.A. Ref. No. 2149/10 was given as 88m².
- 7.2.19. Of further note there is no distinction made in terms of the floor area within a dwelling in terms of its use for storage which the appellant in this case contends is the functional use of the additional floor area to the host dwelling at attic level.
- 7.2.20. The proposed new and retained floor area is given as 170.5m². As such this equates to an additional 21.5m² of floor area, this when multiplied by the applicable €113.82 per square meter for residential development equates to a sum of €2,447.13 which is the applicable contribution payment for the development sought under this application.
- 7.2.21. Based on the above considerations, I therefore recommend that the Board direct the amendment of Condition No. 2 to reflect this revised sum.

7.3. Condition No. 3

7.3.1. Condition No. 3 requires revisions to the development sought and for these revisions to be subject to the written agreement of the Planning Authority prior to the commencement of any grant of permission. The first revision is set out under

- subsection a). This requires the gabled roof to be omitted and replaced with a side dormer for the purpose of providing head height to the staircase. In relation to this amendment, it also sets out that the side dormer shall have a hipped or apex type roof structure over which shall not exceed the ridge height of the main roof. As well as it requires any glazing of the dormer to be obscure glazing. Like sub condition b) which I will examine separately below, the given reason for this amendment to the proposed development is to ensure that the development is not out of character with the surrounding area.
- 7.3.2. The Planning Authority's Planning Officer's report refers to applicable development management policies set out in the Development Plan, 2016-2022, in relation to this type of development. I note that this Development Plan has been recently superseded and as such the provisions of the new Dublin City Development Plan, 2022-2028, are now applicable in the determination of this appeal case.
- 7.3.3. Notwithstanding, this the provisions for this type of development have carried through to the new Development Plan and have also become more robust. They similarly seek that such developments respect the host dwelling and the defining character as well as features of their streetscape setting. With these features including but not limited to roof structures. It is against this context that the Planning Officer raised concerns in relation to the appropriateness of the roof structure in its context.
- 7.3.4. The appellant seeks to maintain the proposed development, including the roof structure over as set out in their planning application and argue that there is precedent for this type of design approach within the residential scheme of Villa Park but also in the wider setting including Ashington Court and Ashington Avenue.
- 7.3.5. I am cognisant that whilst the host dwelling forms part of a semi-detached pair; notwithstanding, the subject semi-detached pair like others that make up its streetscape scene essentially are linked by their single storey side garages/converted to habitable accommodation side projections. As such the host dwelling forms part of a larger originally highly uniform and coherent in design, built form and appearance formally designed and laid out residential development.
- 7.3.6. Notwithstanding, the host dwelling and its streetscape scene, is not afforded any specific protection and views of the host dwelling are localised to the streetscape scene of Villa Park Gardens and Villa Park Road. Though hipped roofs predominate

- the visual context and are the predominant roof structure type within this established and mature residential scheme. Notwithstanding, since its completion properties within it have been subject to a variety of alterations and additions with this including limited examples side extensions with gabled side extensions.
- 7.3.7. Where these have been provided they have not diminished in a significant manner the visual amenity of their setting and arguably they distinguish new building layers as distinctive but yet harmonious new insertions within their streetscape scene given the fact that side gables are quite a characteristic feature of suburban residential development schemes within the wider setting.
- 7.3.8. Views of these side interventions are also only visible in the local context.
- 7.3.9. Further concentrating development where possible in a sympathetic manner to the side of properties within this scheme in many cases results in less adverse residential amenity impact on adjoining properties.
- 7.3.10. Having regard to the above considerations, including having regard to the pattern of development in the area, the land use zoning objective of the site which seeks to achieve a balance between improving and protecting residential amenity as well as Section 15.5.3 of the Development Plan and Volume 2 Appendix 18 Sections, 1.2, 1.3, 4 as well as 5, I am of the opinion that the design of the roof structure over the extension do not unduly impinge upon the visual amenities of the area or the character of the host dwelling, to such an extent that would warrant the attachment of Condition No. 3 a) to the grant of permission.
- 7.3.11. In relation to sub condition b). It requires the rear dormer to be reduced in extent as far as necessary to ensure that it does not project above or beyond the area occupied by the side dormer and remaining hipped roof.
- 7.3.12. Given the consideration and conclusions set out above in relation to sub-condition a). Together with the fact that the host property benefits from a wide and deep rear garden, in a setting where there is an already established pattern of overlooking arising to properties adjoining the site to the north and south due to their 2-storey built form, additional 2-storey extensions, the medium density of the development and the lack of any robust screening that would block views from the first floor level of properties. Further the site, the properties adjoining it to the north and south back onto a large green open recreational amenity space with dense mature trees and boundary

treatments obscuring views. I am of the opinion that the further amendments required under sub condition b) are not warranted and that they would not give rise to any improvement to the visual and/or residential amenity impact of the proposed development sought under this application.

7.3.13. In conclusion I recommend that Condition No. 3 in its entirety be omitted from the notification to grant permission.

7.4. Condition No. 4

- 7.4.1. This condition requires the dormers to be clad in slates/tiles to match the cladding of the existing roof structure. The given reason for this is in the interest of visual amenity. I consider that the use of more contemporary palette of materials that have the capacity to respect and harmonise with host structures can in certain circumstances where carefully considered contribute to distinguishing new building layers from old. Thus, making the historical evolution of the building legible.
- 7.4.2. In addition, having regard to the considerations set out in relation to Condition No. 3 of the notification to grant permission and the siting of the subject property at a location where there is a robust buffer of rear boundary treatments that continue in a northerly and southerly direction.
- 7.4.3. When taken together this effectively means that the dormer would not be visible from the public domain but from the private amenity domain of properties in its vicinity only limited views of it due would be visible.
- 7.4.4. I therefore do not consider that the requirements of Condition No. 4 are warranted in the interest of protecting visual amenities of the area. Nor am I convinced that the use of slates/tiles will necessary integrate what is a substantive dormer structure in its own right more successfully than the type of cladding proposed.
- 7.4.5. Moreover, I am not convinced the use of contemporary materials in the finish of the cladding if appropriately chosen would be contrary to the provisions of the Development Plan for residential extension.
- 7.4.6. In conclusion I recommend that Condition No. 4 in its entirety is omitted from the grant of permission.

8.0 Appropriate Assessment

8.1.1. The subject site is located in an established residential area and is not located adjacent to nor in close proximity to any European sites, as defined in Section 177R of the Habitats Directive. Having regard to the nature and scale of the proposed development and/or the nature of the receiving environment and/or proximity to the nearest 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.

9.0 Recommendation

9.1. In relation to Condition No. 2:

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area has not been properly applied in respect of Condition Number 2 and directs the said Council to **AMEND** Condition Number 2 to read as follows:

A development contribution in the sum of €2,447.13 shall be paid to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

9.2. In relation to Condition No. 3 and 4:

Having regard to the pattern of development in the vicinity, to the design, built form and scale of the proposed development, it is considered that the extension as originally proposed would not seriously injure the visual or residential amenities of the area and would not conflict, in a material way, with the provisions of the Dublin City Development Plan, 2022-2028. The Board therefore directs the Planning Authority under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended to **REMOVE** Condition No.s 3 and 4.

Patricia-Marie Young Planning Inspector

21st day of December, 2022.