



An  
Bord  
Pleanála

## Inspector's Report ABP-314506-22

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<b>Development</b>	Construction of a new three storey house over basement with second floor front patio balcony, ancillary site works, new drainage systems and new vehicular entrance.
<b>Location</b>	44A and 44b North Avenue, Mount Merrion, Co Dublin, to the rear of 44a North Avenue, Mount Merrion, Co Dublin
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D22A/0430
<b>Applicant(s)</b>	Kevin Houlihan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Kevin Houlihan
<b>Observer(s)</b>	Des Smyth Anne Davitt and John Flood

Francis J Moran on behalf of MMRA  
Cllr. John Kennedy

**Date of Site Inspection**

16<sup>th</sup> February 2023

**Inspector**

Lorraine Dockery

## 1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of 398 square metres, consists of the western rear side section of the rear garden area of No. 38 Greenfield Road, Co. Dublin. There is an existing laneway access to the south of the site. This is an established residential area, with dwellings of varying styles evident.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of a new three storey house over basement with second floor front patio balcony, ancillary site works, new drainage systems and new vehicular entrance.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority REFUSED permission for two no reasons as follows:

1. The proposed design and scale for the front of the dwelling is considered to be overly complicated, poorly laid out, to be lacking in terms of domestic styling and arrangement and would not be in keeping with the pattern of development in the area. The design of the proposed dwelling would be visually incongruous in its setting and would have an undue negative visual impact on its surroundings. The proposed development would thus be contrary to Development Plan policy Section 12.3.7.7 (infill) in that the physical character of the area which would not be retained and would be contrary to the proper planning and sustainable development of the area.
2. The proposed first-floor and roof level, in close proximity to the adjacent rear garden to the side at 38 Greenfield Road, would result in a significant overbearing impact and undue overlooking which is indicative of overdevelopment. The proposed rear garden depth of 7.35m would not meet the 11m garden depth requirement for private amenity space. The development is thus contrary to section 12.8.7.1 of the County Development Plan and is also contrary to policy with regard to the protection of residential

amenity, PHP20. The proposed development is contrary with section 4.3.1.3 of the 2022-2028 County Development Plan in terms of height and impact on residential amenities and would thus be contrary to Development Plan policy and to the proper planning and sustainable development of the area.

Note: The Planning Authority has significant concerns in relation to the proposed access arrangement (see Transportation Report) in the context of the policy for Backland Development and the potential for significant overshadowing of adjacent property. These concerns would have to be overcome if a new dwelling is to be permitted on the site.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The main points of the planner's report include:

- Principle of the sub-division and provision of a dwelling in the rear garden of No. 38 Greenfield Road is accepted, concerns expressed regarding design and layout. The proposal in the context of the surrounding garden is considered to be excessive in terms of height, overbearing and overlooking
- Recommends refusal of permission, for reasons to those outlined above in decision

### 3.2.2. Other Technical Reports

Transportation Planning Division- Further Information requested in relation to vehicular access details and Construction Management Plan

Drainage Division- No objections, subject to conditions

Parks and Landscape Section: Further Information requested in relation to existing and proposed planting

## 4.0 Prescribed Bodies

### Irish Water

Further Information requested- The applicant is required to engage with Irish Water

through the submission of a Pre-Connection Enquiry (PCE) in order to determine the feasibility of connection to the public water/waste water infrastructure. The Confirmation of Feasibility (COF) must be submitted to the planning department as the response to this further information request

## 5.0 **Planning History**

None

### Concurrent Appeal on Adjacent Site

#### ABP-314507-22 (D22A/0427)

Permission REFUSED for the construction of a three-storey house over basement at 44C North Avenue, Mount Merrion, Co. Dublin. Currently on appeal. Decision PENDING

## 6.0 Policy and Context

### 6.1. Development Plan

The Dun Laoghaire County Development Plan 2022-2028 is the operative County Development Plan.

Zoning: 'Objective A' which seeks 'to provide residential development and improve residential amenity while protecting the existing residential amenities'.

Section 12.3.7 Additional Accommodation in Existing Built-Up Areas

#### Policy HER21

It is a Policy Objective to:

- i. Encourage the appropriate development of exemplar nineteenth and twentieth century buildings, and estates to ensure their character is not compromised.
- ii. Encourage the retention and reinstatement of features that contribute to the character of exemplar nineteenth and twentieth century buildings, and estates such as roofscapes, boundary treatments and other features considered worthy of retention.
- iii. Ensure the design of developments on lands located immediately adjacent to such groupings of buildings addresses the visual impact on any established setting.

### 6.2. Natural Heritage Designations

The appeal site is not located in or immediately adjacent to a designated European Site, a Natural Heritage Area (NHA) or a proposed NHA.

### 6.3. **EIA Screening**

Having regard to the nature and scale of the development proposed, the site location within an established built-up urban area which is served by public infrastructure and outside of any protected site or heritage designation, 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.

## 7.0 **The Appeal**

### 7.1. **Grounds of Appeal**

The main points of the appeal are:

- Refutes grounds of refusal and considers that they have addressed sensitivities and constraints of site with contemporary design solution
- Cites examples of other permissions granted in vicinity
- Outlines design rationale- height, form and massing in line with other residential units; no overbearing/overshadowing impacts; adequate separation distances proposed; de minimis overlooking
- Shadow Analysis submitted

### 7.2. **Planning Authority Response**

A response was received which states that the grounds of 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.

### 7.3. **Observations**

Four observations were received, which may be summarised as follows:

- Impacts on visual amenity- architectural design and materials; scale; height; visually intrusive and incongruous; over-dominant; overdevelopment of site
- Impacts on residential amenity- overshadowing; overlooking; overbearing; impacts on privacy; level differences; devaluation of property
- Contrary to Development Plan policy including Policy HER21 and zoning objective
- Previous works to existing Rupert Jones/John Kenny homes have been in harmony with original designs
- Precedents referred to in appeal are not directly relevant
- Concerns regarding access arrangements
- Other Matters: validation, site ownership, drainage matters

#### 7.4. **Further Responses**

None

### 8.0 **Assessment**

- 8.1. I have read all the documentation attached to this file including inter alia, the appeal, the report of the Planning Authority and the observations received, in addition to having visited the site. The primary issues, as I consider them, are (i) policy context (ii) impact on visual and residential amenities arising from the proposed development (iii) other matters.

#### Policy Context

- 8.2. I note national guidance promoting the densification of appropriate infill and under-utilised sites in urban areas close to employment and public transport links. I consider this to be one such under-utilised site and consider the principle of such a development to be generally in compliance with national guidance in this regard. I also note that the planning authority do not raise concern in relation to the principle of a dwelling on this site.
- 8.3. The site is zoned 'Objective A' which seeks to 'to provide residential development and improve residential amenity while protecting the existing residential amenities'. I



consider the principle of a proposed dwelling to be in accordance with the zoning objective for the site.

#### Visual Amenity

- 8.4. The first reason for refusal which issued from the planning authority relates to the design and scale of the proposed development, which they considered to be overly complicated, poorly laid out, to be lacking in terms of domestic styling and arrangement and would not be in keeping with the pattern of development in the area. I would not disagree with this opinion of the planning authority and I consider that the proposed dwelling, due to its overall height, scale and massing, together with the elevational treatment put forward would be visually incongruous in its setting, would be excessively dominant and would have an undue negative visual impact on the character of this somewhat sensitive area.
- 8.5. I do not have issue with the principle of a dwelling on this site and I consider that it has the capacity to accommodate a dwelling of lesser scale and height. In addition, I do not have issue with a contemporary designed house at this location and I consider that a pastiche style would be inappropriate at this location. However, notwithstanding the above, I consider that any dwelling on this site should be mindful of its sensitive context and in my opinion, this is not being achieved in this instance. The height, scale, bulk and elevational design of any future proposal should reflect this sensitive context.
- 8.6. Having regard to the above, I consider that the proposal to be contrary to Development Plan policy, including Policy HER21 in this regard and contrary to the proper planning and sustainable development of the area.
- 8.7. Residential Amenity
- 8.8. The second reason for refusal which issued from the planning authority related to overbearing and overlooking concerns, in particular at the proposed first-floor and roof level, in close proximity to the adjacent rear garden to the side at 38 Greenfield Road. The planning authority considered this to be indicative of overdevelopment and considered that the proposed rear garden depth of 7.35m would not meet the 11m garden depth requirement for private amenity space. They further consider that the proposed development is contrary to section 12.8.7.1 of the County Development Plan, together with Policy PHP20 (with regard to the protection of residential

amenity), section 4.3.1.3 in terms of height and impact on residential amenities and would thus be contrary to Development Plan policy and to the proper planning and sustainable development of the area.

- 8.9. In terms of impacts on residential amenity, I am cognisant of the relationship of the proposed development to neighbouring properties. Given what I have stated above, in terms of visual impacts, I consider that the proposal could have overbearing impacts on adjoining residential properties, given its overall height, scale and bulk.
- 8.10. In terms of overlooking, I am not unduly concerned and I consider that any overlooking issues would not be so great as to warrant a refusal of permission. While I note the 7.35 metre rear garden length, I highlight to the Board that this is a ground floor element to the proposal and that almost 11 metres is being achieved at first and attic level to the rear boundary. I also note that there are only velux windows to the rear attic space and that there are no directly opposing rear first floor windows. I consider these separation distances to be sufficient and commonplace in such suburban areas. I also note that there is flexibility within the operative County Development Plan for gardens of less than 11 metres (section 12.8.7.1) and in this regard I note the area of private amenity space proposed to the side of the proposed dwelling. Private amenity space in excess of Development Plan standards is proposed. I also note the exempted development regulations for single storey extensions to the rear of such properties in this regard. I am generally satisfied in this regard.
- 8.11. Other Matters
- 8.12. The planning authority attached a note to their refusal highlighting that they have significant concerns in relation to the proposed access arrangement in the context of the policy for Backland Development and the potential for significant overshadowing of adjacent property. They highlight that these concerns would have to be overcome if a new dwelling is to be permitted on the site. I consider that these matters could be dealt with in any future application on this site. I also consider that the provision of two off-street car parking spaces is excessive at this location and that any future application should provide for one no. in-curtilage space only, given the urban location of the site and its proximity to public transport infrastructure.

- 8.13. I note the concerns raised in the observation in relation to drainage. I note that the planning authority were not unduly concerned in relation to this matter and that the Drainage Division had no objections, subject to condition. I note the report of Irish Water and consider that this matter could be adequately dealt with by means of condition. I have no information before me to believe that the proposal would be prejudicial to public health.
- 8.14. Matters raised in relation to ownership are considered to be civil matters outside the remit of this planning appeal. I am satisfied, based on this information, that the applicant has demonstrated sufficient legal interest to make this application. As in all such cases, the caveat provided for in Section 34(13) of the Planning and Development Act 2000, as amended, applies which stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development. I also note the provisions of Section 5.13 of the Guidelines for Planning Authorities, Development Management, 2007 in this regard.
- 8.15. Issues of validation are a matter for the planning authority, outside the remit of this planning appeal.

#### Conclusion

- 8.16. Having regard to the extent, height and design solution put forward, I am not satisfied that the proposed development is in accordance with the zoning objective of the County Development Plan, which seeks 'to provide residential development and improve residential amenity while protecting the existing residential amenities', is not in keeping with the pattern of development in the area and is not in accordance with the proper planning and sustainable development of the area.

### **9.0 Appropriate Assessment Screening**

- 9.1 Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a hydrological connection, the potential of likely significant effects on European Sites

arising from the proposed development, alone or in combination effects, can be reasonably excluded.

## 10.0 Recommendation

10.1. I recommend permission be REFUSED

## 11.0 Reasons and Considerations

Having regard to the pattern of development in the area, its residential zoning under the Dun Laoghaire Rathdown County Development Plan 2022-2028, and to the standards for the development of infill development set out in section 12.3.7.7 and Policy HER21 of that Plan, it is considered that the proposed development by virtue of its height, scale, bulk, massing and design rationale would be excessively dominant and visually incongruous in this setting and would negatively impact on the visual amenity and character of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

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Lorraine Dockery  
Senior Planning Inspector

21<sup>st</sup> February 2023