



An
Bord
Pleanála

Inspector's Report

Addendum 314605-22

Development

The demolition of the existing single-storey garage and the construction of a new 2-storey dwelling, new driveway entrance and piers, connection to existing services, and all associated site works.

Location

21 Asgard Park, Howth, County Dublin.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F22B/0324.

Applicant(s)

Sarah & Conor Gallagher.

Type of Application

Permission.

Planning Authority Decision

Refusal.

Type of Appeal

First Party

Appellant(s)

Sarah & Conor Gallagher.

Observer(s)

Noel Ross

Damien and Bernardine Jennings

Brian Jennings

Kitty and Sinead McCormack
Andrew Bonnell and Nicola Harvey

Date of Site Inspection

01/08/2023.

Inspector

Anthony Abbott King.

1.0 Context

- 1.1. The appeal (ABP-314605-22) was considered at a Board meeting held on the 24th October, 2023. The Board decided to defer consideration of this case and to issue a Section 132 notice to the applicant requiring the submission of further information. This appeal case was again considered at a Board meeting held on the 8th December 2023 and as per Board Direction BD-014813-23 the Board decided to invoke Section 131 of the Planning and Development Act, 2000 (as amended) and invite parties to comment on the applicant's response to the Board's Section 132 notice.
- 1.2. Comments have been received from Fingal County Council, Kiaran O'Malley & Co (on behalf of observer Noel Ross), Damien & Bernadine Jennings (observer) and Brian Jennings (observer) within the time limit allowed to make submissions.

2.0 Section 132 notice

- 2.1. The Board considered the submissions on file and the Inspector's Report at a meeting held on the 24 October, 2023. The Board decided to defer consideration of this case and to issue a Section 132 notice to the applicant regarding the following:

- (1) Objective DMSO26 Fingal County Development Plan 2023-2029 states the following:

"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. (Note: This separation distance may be reduced on a case-by-case basis in relation to infill and brownfield development which provides for the regeneration of under-utilised lands and subject to the overall quality of the design and the schemes contribution to the streetscape. A statement demonstrating design mitigation and maintenance arrangements shall be submitted in such cases)"

The Board noted that the separation distance proposed in the application documentation submitted to the Planning Authority proposed a separation distance of less than 2.3m and therefore on the basis of the aforementioned policy, you are requested to submit a statement demonstrating design mitigation and maintenance arrangements for the proposed development.

(2) Section 14.21.1 of the Fingal Development Plan 2023-2029 states in respect of the re-use of existing buildings that *“Where demolition is proposed, the applicant must submit a demolition justification report to set out the rational for the demolition having regard to the embodied carbon of existing structures as well as the additional use of resources and energy arising from new construction relative to the reuse of existing structures”*.

The applicant is requested to submit a demolition justification report in respect of the proposed structure to be demolished having regard to the foregoing.

3.0 Applicant response to Section 132 notice

The applicant responded on the 30th November, 2023, prepared by Hughes Planning on behalf of Sarah & Conor Gallagher, to the Board letter of the 3rd November, 2023 in the matter of the Section 132 notice. The applicant response is summarised below with reference to Paragraph (1) and Paragraph (2) of the subject notice.

Paragraph (1) response:

- Objective DMSO26 allows for a reduction in the 2.3m separation distance between dwellings where the development proposal relates to infill development, which provides for the regeneration of underutilised lands and is subject to overall quality of design;
- The proposed development for a two-storey family dwelling to replace a garage is the type of development that should benefit from the relaxation of the separation distance requirement;
- The existing garage is built directly onto the eastern site boundary with no. 20 Asgard Park;
- There is no template for the submission of a statement demonstrating design mitigation and maintenance arrangements, therefore, these matters are addressed under the headings: (1) maintenance arrangements & (2) design mitigation;
- In the matter of maintenance, the limited nature of the proposed separation distances as originally proposed to the western boundary (0.68m) & eastern boundary (0.8-1.03m) and as revised to the western boundary (1.87-2.15m)

& eastern boundary (0.8m) is acknowledged. However, future maintenance requirements to the gable elevations will be required sporadically owing to the method of construction, which aligns with best building practice.

Furthermore, the proposed separation distances in conjunction with advances in relevant maintenance apparatus will be sufficient to carry out all standard maintenance work including painting, gutter cleaning, drainpipe replacement and maintenance of utility systems;

- In the matter of design mitigation, the gable elevations of the proposed development are purposefully unadorned comprising a render finish with no fenestration, vents or decorative details. Furthermore, it is noted that the front garden space is sufficient in area to accommodate bin storage, as indicated on the site layout plan, and a potential covered bicycle parking area. The applicant confirms willingness to accept a condition to provide for a purpose-built bicycle storage area in the front garden highlighting the potential siting along the eastern boundary or in front of the dwelling.

Paragraph (2) response:

- There is no template for a demolition justification report within the Fingal County Development Plan. Therefore, the subject matter is addressed under the following headings: (1) development plan policy, (2) architectural merit; (3) preliminary structure appraisal and, (4) energy assessment;

Development Plan Policy

- In the matter of development plan policy, the applicant cites relevant policy Objective SPQHO44 (retention, retrofitting and retention of existing dwellings), noting that the existing garage structure is not habitable nor is it a purpose-built dwelling. Furthermore, the form and structural integrity of the garage is insufficient to allow for a refurbishment / deep retrofit.
- In regard to Objective DMSO256 (retrofitting and reuse of existing buildings), the energy poor rating of the existing structure is noted. The rating demonstrates that the garage was never intended for habitation or designed for habitation plus the level of retrofit required would be substantial and would not result in the achievement of current building and accommodation standards.

- In regard to Objective SPQHO40 (promote the development of wide / corner garden sites within the curtilage of existing dwellings) & Objective SPQHO42 (promote the development of underutilised infill, corner and back-land sites), previous planning authority decisions are cited for replacement dwellings in support of the development noting that the proposed infill energy efficient (BER A rated) bespoke family dwelling to replace the garage will represent a more sustainable use of the site.

Architectural Merit

- In the matter of architectural merit, the applicant notes that the existing 61 sqm garage is not a protected structure nor is it located within an architectural conservation area. It is claimed that the existing unremarkable garage structure does not warrant protection and retention on architectural grounds. Furthermore, the proposed contemporary infill design dwelling will relate successfully in terms of building form and detail to the existing architectural forms to the east and west comprising a similar roof form and fenestration layout, which will sit harmoniously within context.

Preliminary Structural Appraisal

- In the matter of preliminary structural appraisal, the applicant confirms that a structural review of the garage was undertaken in order to support the planning application. The existing building is substandard in nature and has significant issues in terms of its construction. These issues include no insulation, poor thermal performance of all elements, poor moisture resistance of all elements and, no radon barrier or damp proof membrane.

Energy Assessment

- In the matter of energy assessment, the applicant claims that the achievement of a reasonable energy performance standard and an acceptable accommodation level through the rehabilitation of the existing garage structure constructed circa. 1950 (modified in the 1970's) would be cost (including future annual energy cost) and structurally prohibitive. The garage structure is at the end of its life cycle. Furthermore, it is claimed the existing garage would have an equivalent BER F rating, as it is designed for storage and not for human habitation. In comparison the proposed new build house would be BER A rated.

- The applicant claims that the justification for demolition cannot be solely based on a comparison of the embodied carbon in the existing garage structure versus that in a new build dwelling. The applicant considers that utilising low carbon construction practices in the new-build construction (including the reduction of embodied carbon in building materials through circular and efficient design) will ultimately benefit future occupants and contribute to environmental sustainability.
- Therefore, the energy & environmental benefits of constructing a new-build house (adopting a design approach comprising Lean – use less energy, Clean – supply energy efficiently, Green – use renewable energy) would justify the demolition of the garage given the poor condition of the existing structure and a full evaluation of the long term and life cycle building costs and benefits of the replacement dwelling is considered.

4.0 Section 132 notice response circulation under Section 131

The Board considered the applicant response at a meeting held on the 30th November, 2023. The Board decided to defer the case. The Board requested that the response received from the applicant to the Section 132 notice should be circulated to all parties. Once responses were received that the file be returned to the Inspector for an addendum report.

5.0 Circulation response comments summarised

5.1. Fingal County Council (planning authority)

- It is considered that the response made by the applicant to the Section 132 notice and the revised design option site layout plan submitted with the appeal do not achieve a separation distance of at least 2.3m at any point. It is acknowledged in the submitted report that the separation distances are limited. Thus the proposed development would contravene Objective DMSO26 of the Fingal Development Plan 2023-2029 and would be contrary to the proper planning and sustainable development of the area;

- Furthermore, it is reiterated that the housing development at Asgard Park has a unique identifiable residential character and sense of place given the density and character of the dwellings and sites contained within.
Furthermore, the proposed infill dwelling at this location is considered ad hoc and out of character within this established distinctive housing development.

5.2. Kiaran O'Malley & Co Ltd. (on behalf of observer Noel Ross)

- The proposed development does not comply with the required separation distance of 2.3m. Furthermore, the possible reduction on a case by case basis does not apply in this instance because the development is neither an infill nor brownfield development;
- No version of the site plan can demonstrate compliance with the minimum separation standards required by DMSO26. If the proposed development is deemed to be infill development then Table 14.12 of the development plan requires a minimum of 12% of the site for public open space;
- The applicant has failed to submit a demolition justification report as expressly requested by the Board. Thus the proposed development would materially contravene development plan Objective DMSO26. The Board is therefore requested to refuse permission;
- Instead of providing what was requested, the applicant has subjected commentary under four headings including energy assessment. It has not been demonstrated by an appropriately qualified energy specialist and structural engineer that the existing structure cannot be converted and extended for residential use;
- It is not stated who conducted the preliminary structural appraisal of the existing building. The author of the three bullet point appraisal is not transparent;
- The architectural merit of the existing building is not relevant to the energy assessment of the proposed demolition and replacement with a new building.

5.3. Daimen and Bernadine Jennings (observer)

- A revised separation distance of 0.8m from its eastern boundary with no. 20 Asgard Park rather than the required 2.3m will allow for a narrow passageway between the proposed new house and our home with negative consequences;
- The proposed separation distances on the western boundary of 1.87-2.15m on the western site boundary and 0.8m on the eastern site boundary clearly indicates that this house is squeezed into an inadequate site;
- No other houses in this development of 30 houses has such close proximity to their neighbour;
- Four houses, two on either side of no. 20 Asgard Park, have been reconstructed all maintaining adequate separation distances;
- The proposed new house will change the aesthetics of Asgard Park unlike other reconstructions and cannot be considered to be respectful in scale or to be in harmony with the Asgard Park streetscape;
- The observers did not lodge objection to the four houses reconstructed in the vicinity of no. 20 Asgard Park, as they sit in harmony in the streetscape;
- The cul-de-sac at Asgard Park is unusually small and tight being 20m in diameter. There are currently 5 driveway entrances with 20 vehicles. To allow another driveway will make the driveway more dangerous by reason of additional vehicle movements.

5.4. Brian Jennings (observer)

- The initial eastern site boundary separation distances initially proposed at 0.8-1.03m and the revised design 0.8m separation distance are wholly inadequate for proper maintenance arrangements and 50% substandard for a maintenance ladder;
- Ladders will be required to carry out proper maintenance and require an established safe installation ratio 1:4 height to width space at base, which indicates a location 1.25m away from the building for safe installation;
- Scaffolding may be required to carry out proper maintenance and scaffolding requires a minimum space at the base of 1.22m for safe installation;

- The proposed separation distances are not in keeping with the established character and pattern of development in Asgard Park, which is characterised by generous plots and generous separation distances between boundaries and dwellings;
- The proposed separation distances would detract from and injure the overall quality of the design of Asgard Park, and would be make a significant negative contribution to the streetscape;
- The applicant's agent notes that the existing garage of 21 Asgard Park is built directly onto the eastern site boundary with 20 Asgard Park. This garage was used as an unauthorised dwelling and may have been constructed without the benefit of planning permission;
- The simplistic design of the proposed elevations would not be in keeping with the established character and pattern of development in Asgard Park, which is characterised by typical gables exhibiting fascias, soffits, exposed rainwater goods, windows, vents and decorative details;
- The applicant proposes that the refurbishment of the existing garage as a dwelling unit would not be appropriate is not the case. The existing garage was used as an unauthorised dwelling and can be refurbished as a modern comfortable energy efficient dwelling unit with appropriate planning permission;
- There are conflicting statements in the applicant response on demolition justification dated 30th November, 2023 advocating both an A1 and A3 energy rated design;
- The yellow outline on the zoning map submitted in the applicant response dated 30th November, 2023 includes lands not in control of the applicant. The subject site is very significantly smaller than any other residential site in Asgard Park;
- The reasons for refusal have not been mitigated by the proposals and justifications contained in the applicant's submission of the 30th November, 2023 and as such the decision to refuse planning permission by Fingal County Council should be upheld by the Board.

6.0 Assessment

6.1. This assessment solely relates to the matters contained within the Section 132 notice to the applicant comprising:

- Paragraph 1: Objective DMSO26 Fingal County Development Plan 2023-2029 (the requirement for a 2.3 separation distance between dwellings) and;
- Paragraph 2: Section 14.21.1 of the Fingal Development Plan 2023-2029 (the requirement for justification for the demolition of the existing single-storey pitched roof garage and the construction of a new-build dwelling).

Paragraph 1

6.2. In the matter of Paragraph 1, the applicant acknowledges that the separation distances from the western and eastern boundaries are limited in nature. However, the gable elevations of the proposed development are purposefully unadorned comprising a render finish with no fenestration, vents or decorative details and will be constructed aligned with best building practice mitigating frequent maintenance requirements.

Furthermore, it is noted that the front garden space is sufficient in area to accommodate bin storage, as indicated on the site layout plan where bin storage is located along the eastern boundary. The potential for a dedicated purpose-built bicycle parking area also along the eastern boundary or to the front of the dwelling is proposed by the applicant. I note the overall positive streetscape design, the proposed maintenance and bin storage arrangements and, the potential for a dedicated bicycle parking area to the front of the house, which the applicant confirms would be acceptable if required by way of condition on a planning permission. I consider that the applicant has demonstrated that a reduction in the separation distance below the 2.3m standard is acceptable in the instance of the proposed development given site constraints and the infill nature of the residential unit.

Paragraph 2

- 6.3. In the matter of Paragraph 2, the applicant notes that there is no template for a demolition justification report. The applicant claims that the existing garage structure would have an equivalent BER F rating, as it is designed for storage and not human habitation. In comparison, the proposed new-build house would have a BER A rating. Furthermore, the applicant claims that the justification for demolition cannot be solely based on a comparison of the embodied carbon in the existing garage structure versus that in a new-build dwelling.

It is considered that the low carbon construction practices to be utilised in the construction of the new-build house, including the reduction of embodied carbon in building materials through circular and efficient design (Lean, Clean, Green design approach), and the operational energy efficiency of the new-build house moving forward given a target A energy rating must be factored into the evaluation. I agree with the applicant's holistic consideration of the development in terms of its overall sustainability. I consider that the applicant has demonstrated through a qualitative assessment the justification for the demolition of the existing single-storey pitched roof garage and the construction of a purpose built residential unit.

- 6.4. The comments received on the circulation of the applicant response to the Section 132 notice to all parties are noted. It is considered that no significant new matters arise from the responses of third parties and the planning authority.

7.0 Conclusion

The applicant has satisfactorily addressed the matters requested by the Board on the 03rd November, 2023 by way of the response received on the 30th November, 2023.

In the matter of the requirement for a 2.3m separation distance between dwellings, the applicant on balance has demonstrated that a reduced separation distance is acceptable in the instance of the proposed infill dwelling by reason of the overall

quality of the streetscape design and the maintenance arrangements clarified in the applicant response.

In the matter of demolition, the applicant has demonstrated a qualitative assessment justification for the demolition of the existing single-storey pitched roof garage and the construction of a purpose built residential unit.

I conclude that the matters requested in the Section 132 notice have been successfully addressed by the applicant.

Finally, the matter of the rear massing of the infill house must be considered before a positive recommendation can be recorded.

The proposed infill house would exhibit a blank two-storey wall of development that would project an approximate 8 metres forward of the rear building line of the neighbouring house at no. 20 Asgard Park. The massing of the 2-storey infill development along the shared property boundary (0.8m – 1.03m separation distance from the eastern boundary) with no. 20 Asgrad Park as presently configured would have overshadowing and visual overbearing impacts on the adjoining property.

In the matter of the side elevation massing along the shared property boundary with no. 20 Asgard Park, Section 14.6.6.4 (Overlooking and Overbearance) of the Fingal Development Plan 2023-2029 states that issues in relation to excessive overlooking and overbearance of neighbouring properties may be addressed through relocation or reduction in building bulk and height. Mitigation measures to ameliorate overbearance should be considered and may include alterations to the bulk and massing of the proposed scheme relative to neighbouring property.

It is considered that the set back of the rear elevation of the infill house at first floor level by 4m (measured externally) for the full width of the rear elevation would address bulk and massing concerns. The proposed setback would result in the omission of the master bedroom suite. This modification to the first floor massing would significantly reduce the bulk and excessive projection of the infill house to the rear of the site. It is considered that the modification would mitigate the negative impact of the development on the adjoining properties in particular no. 20 Asgard

Park (to the east) in terms of overshadowing, overbearing and potential overlooking. This can be dealt with by way of condition.

I conclude that a positive recommendation can now be recorded following clarification of the matters the subject of the Section 132 notice and the modification of the development proposal by way of condition.

8.0 Recommendation

- 8.1. I recommend a grant of permission subject to condition having regard to the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to the grounds of appeal, the observations of third parties, the pattern of development in the area, which comprises detached houses on substantial plots within a cul-de-sac configuration and, the policy framework provided by the Fingal Development Plan 2023-2029 for new residential development and for infill housing in side gardens / corner sites, it is considered that the proposed development, subject to compliance with the attached conditions, would be consistent with the RS residential Zoning objective, which seeks to provide for residential development while protecting and enhancing residential amenities, would achieve compact growth consolidation objectives, would satisfy development management standards for infill residential development, including the requirement to protect the amenities of adjoining dwellings and, as such, would be consistent with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning
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	<p>authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to the commencement of development the developer is requested to submit for the written agreement of the Planning Authority revised drawings providing for the following modifications:</p> <ul style="list-style-type: none"> (i) The set back of the rear elevation of the infill dwelling house at first floor level by 4m (measured externally) for the full width of the rear elevation; (ii) The provision of a purpose-built bicycle storage area in the front garden. <p>Reason: In the interest of orderly development and residential amenity.</p>
3.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water. The developer shall adhere to the following requirements:</p> <p>An existing 1500mm concrete foul sewer, which traverses the rear garden of the proposed development. A minimum 3m separation distance must be demonstrated between the sewer and the proposed development</p> <p>Reason: In the interest of public health.</p>
4.	<p>The developer shall adhere to the recommendations of the Planning & Strategic Infrastructure Department (Transportation Planning Section) of the Planning Authority.</p> <p>Reason: In the interest of road safety and in the interest of orderly development.</p>

5.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
6.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p>Reason: In the interest of public health.</p>
7.	<p>Details of the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
8.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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"I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way."



Anthony Abbott King
Planning Inspector

23 February 2024