



An
Bord
Pleanála

Inspector's Report

ABP-314908-22

Development	Construction of 1-bed infill residential unit
Location	8 The Park, Melrose Park, Kinsealy, Swords, Co. Dublin, K67 PF84
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0088
Applicant(s)	Kevin Farrelly
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party
Appellant(s)	David and Karen O'Connor
Observer(s)	None
Date of Site Inspection	22 nd May 2023
Inspector	Bernard Dee

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1.0 Site Location and Description

- 1.1. The appeal site is located in the rear garden area of No. 8 The Park within a cul-de-sac road within the Melrose Park estate. This estate is located to the west of the M1 and is accessed via Exit 3 on the motorway travelling north. Melrose Park estate is located to the north-east of Dublin Airport.
- 1.2. 'The Park' is a cul-de-sac development of 10 no. two-storey semi-detached oriented in a north-south direction of which No. 8 is the most northerly unit. To the east of 'The Park' is an area of public open space with screen planting further east to provide a buffer with the M1. To the north of the appeal site and fronting onto the east-west 'The Avenue' are 7 no. two-storey houses in both terraced and detached formats.
- 1.3. The appeal site is to the rear (west) of No. 8 and is bounded to the estate road by a rendered boundary wall. The use of the appeal site is currently ancillary to the main house as a rear garden area. Access to the rear garden was not possible during the site visit on 22nd May 2023 as nobody was home.

2.0 Proposed Development

- 2.1. The construction of a 1-bed infill residential development, new vehicular access, 1 no. within curtilage car parking space and all associated site development and engineering works necessary to facilitate the development.
- 2.2. From the drawings submitted, a one bedroom dwelling unit of contemporary design is proposed. The roof profile is a split A-frame allowing a roof light row facing west just under ridge which measures 6.1m in height. The footprint of the dwelling is approximately 8.3m x 8.5m with a GFS of 61m². A 65m² garden and a parking space are also proposed within the appeal site.
- 2.3. The vehicular entrance is proposed through the garden wall at the end of the cul-de-sac.

3.0 Planning Authority Decision

3.1. Decision

Permission for the proposed development was granted on 26th September 2022 subject to 11 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There are three Planning Reports on file dated 19th April, 17th August and 26th September 2022 dealing respectively with a Further Information request, a Clarification of Further Information request and a recommendation to grant report.

The RFI sought information on four issues:

- Clarification of the ownership boundary with the No. 8 property.
- Revised site layout drawings addressing access provisions and details of footpaths and protecting the access of No. 7A The Avenue to the north of the appeal site.
- Details of SuDS proposals for the proposed dwelling.
- Revision of drawings to include for 2.5m² of storage space within the proposed dwelling.

The CFI sought clarification of one issue:

- Revised site layout drawings addressing access provisions and details of footpaths and protecting the access of No. 7A The Avenue to the north of the appeal site.

The Planning Report dated 26th September 2022 expressed satisfaction with the FI received and recommended a grant subject to conditions.

3.2.2. Other Technical Reports

Within the three Planning Reports referenced in 3.2.1 above, there were multiple reports from the Transportation Section, Parks and Green Infrastructure Section and the Water Services Section upon which the RFI and CFI requests were based.

3.2.3. Prescribed Bodies

Irish Water had no objection to the proposed development subject to compliance with a standard condition.

Dublin Airport Authority noted the location of the site within noise zone C and advised a noise insulation condition if permission is granted for the dwelling.

3.2.4. Observations

15 no. observations were made in relation to this application and these are summarised in the Planner's Report on file.

4.0 Planning History

4.1. On the Appeal Site

- F02A/1377: Permission refused for a detached bungalow and driveway due to insufficient space being provided for off-street car parking and an adequate level of private open space.
- F99A/1047 and PL06F.116972: Permission refused for two townhouses to the rear of No. 8 as the development would be out of character with the area, provide insufficient private open space, would cause overlooking of adjacent properties and would injure the residential amenity of the area.

5.0 Policy and Context

5.1. Development Plan

Fingal Development Plan 2023-2029 is the statutory plan for the area within which the appeal site is situated and it came into effect on Wednesday 5th April 2023. The Planner's Reports on file therefore refer to the Fingal Development Plan 2017-2023 and may be disregarded by the Board. Set down below are the relevant Fingal Development Plan 2023-2029 policies and objectives in relation to this appeal.

The appeal site is located within Zoning Objective RS - Provide for residential development and protect and improve residential amenity, where the vision is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

Policy CSP12 (and Policy SPQHP38) – NPF and RSES - Promote compact growth in line with the NPF and RSES through the inclusion of specific policies and targeted and measurable implementation measures that: - Encourage infill / brownfield development.

3.5.13 Compact Growth, Consolidation and Regeneration - The Council, in line with national and regional planning policies and objectives seeks to promote the regeneration of Fingal's towns and villages by making better use of under-used land and buildings within the existing built-up urban footprint and to drive the delivery of quality housing and increased housing options. This may be achieved in several ways and by projects of varying scale including small residential extensions, subdivision of large gardens to accommodate infill development and where appropriate, backland development opportunities.

Objective SPQHO37 – Residential Consolidation and Sustainable Intensification
Promote residential consolidation and sustainable intensification at appropriate locations, through the consolidation and rejuvenation of infill/brown-field development opportunities in line with the principles of compact growth and consolidation to meet the future housing needs of Fingal.

Objective SPQHO39 – New Infill Development
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 SPQHO42 – Development of Underutilised Infill, Corner and Backland Sites
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.

Table 14.4: Infill Development

Infill Development
Infill Development presents unique opportunities to provide bespoke architectural solutions to gap sites and plays a key role in achieving sustainable consolidation and enhancing public realms.
Proposals for infill development will be required at a minimum to:
<ul style="list-style-type: none">➔ Provide a high-quality design response to the context of the infill site, taking cognisance of architectural form, site coverage, building heights, building line, grain, and plot width.➔ Examine and address within the overall design response issues in relation to over-bearance, overlooking and overshadowing.➔ Respect and compliment the character of the surrounding area having due regard to the prevailing scale, mass, and architectural form of buildings in the immediate vicinity of the site.➔ Provide a positive contribution to the streetscape including active frontage, ensuring that the impacts of ancillary services such as waste management, parking and services are minimised.➔ Promote active street frontages having regard to the design and relationship between the public realm and shopfronts of adjacent properties.

14.8.1 Floor Areas - The minimum size of habitable rooms for houses shall conform with dimensions as set out in Quality Housing for Sustainable Communities: Best Practice Guidelines for Delivering Homes Sustaining Communities 2007 or the appropriate National Guidelines standards in operation at the date of lodging the application for planning permission. See Table 5.1 below.

Table 5.1: Space provision and room sizes for typical dwellings

DWELLING TYPE	TARGET GROSS FLOOR AREA	MINIMUM - MAIN LIVING ROOM	AGGREGATE LIVING AREA	AGGREGATE BEDROOM AREA	STORAGE
	(m ²)	(m ²)	(m ²)	(m ²)	(m ²)
1BED/2P House (1 storey)	44	11	23	11	2

14.10.1 Corner/Infill Development - The development of infill housing on underutilised infill and corner sites in established residential areas will be encouraged where proposals for development are cognisant of the prevailing pattern of development, the character of the area and where all development standards are observed. While recognising that a balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill, such development provides for the efficient use of valuable serviced land and promotes consolidation and compact growth. Contemporary design is encouraged and all new dwellings shall comply with Development Plan standards in relation to accommodation size, garden area and car parking.

Objective DMSO31 – Infill Development 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.

Table 14.8: Private Open Space for Houses

House type	Minimum open space
3 bedrooms or less	60 sq. m.
4 or more bedrooms	75 sq. m.

Table 14.19: Car Parking Standards

Land Use Category	Zone 1: Developments within 800m of a high-quality bus service, or 1600m of an existing or planned Luas/DART/Metro Rail station or in lands zoned Major Town Centre***		Zone 2: All other areas	
Residential				
Residential (1-2 Bedroom)	0.5	Max	1 plus 1 visitor space per 5 units	Norm

5.2. Natural Heritage Designations

The following natural Heritage designations are located approximately 2km to the north-east of the appeal site:

- Malahide Estuary SPA – 004025.
- Malahide Estuary SAC – 000205.
- pNHA Malahide Estuary – 000205.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any 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. The grounds of appeal are as follows:

- The proposed dwelling would compromise the privacy of nearby residents, especially the occupiers of 7A The Avenue who share a property boundary with the appeal site, with a consequent devaluation of property values.
- The proposed development would restrict views from existing houses.
- The proposed development with the proposed vehicular access would result in the loss of on-street parking in an area already suffering from parking congestion. The proposed development would therefore increase the level of traffic hazard in the vicinity of the appeal site.
- The anti-social behaviour associated with the rented No. 8 would be increased if the proposed dwelling were to be permitted and subsequently rented upon completion.
- Previous applications for residential development of this back garden site have been refused by Fingal County Council and the present proposal should also be refused for similar reasons.

6.2. The applicant's response is as follows:

- The proposed dwelling has been designed as a modest, single storey, one bedroom residential structure and has been specifically designed to prevent overlooking of neighbours.
- The overlooking by the appellants of the proposed dwelling is not an issue as they already overlook from their first floor windows (of No.9 The Park), structures constructed in the rear gardens of Nos. 10, 11 and 12 The Park.
- The proposed development includes a vehicular entrance to accommodate a car parking space within the appeal site as required by the Development Plan standards, and the lowering of the boundary wall outside the curtilage of No. 7A The Avenue is proposed to ensure safe ingress and egress.
- It is proposed that 92m² of amenity space will serve the proposed dwelling and still leave 79m² to serve No. 8 which is in compliance with Development Plan standards.

- On-street parking and the lack of parking in the area is not the responsibility of the applicant and any concerns regarding traffic hazard arising from such parking should be directed to the Garda or the Local Authority as it is not a relevant planning issue.
- The issue of whether or not the proposed dwelling will be a rental property and the issue of anti-social behaviour are not planning issues.
- The proposed development is consistent with the National, Regional and local policy context in terms of sustainable development of urban areas.

6.3. Planning Authority Response

The Planning Authority have no additional comments to make but request that in the event the Board grant permission for the proposed dwelling that Condition No. 7 (Tree Bond) and Condition No. 11 (Section 48 Levy) be retained in the Board's Order.

6.4. Observations

None received.

6.5. Further Responses

Not applicable.

7.0 **Assessment**

Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.

The main issues, therefore, are as follows:

- Principle of development.
- Impact on residential amenity.
- Visual impact.
- Vehicular access.
- Services provision.

- AA Screening.

7.1. Principle of Development

7.1.1. Having regard to the residential zoning of the area within which the appeal site is situated and to the policy in the interests of sustainability, to increase the density of serviced urban areas through various means including infill/backland development, as well as the planning history of the wider area, I conclude that the construction of a residential development at this location is acceptable in principle.

7.2. Impact on Residential Amenity

7.2.1. The Third Party states that the residential amenity of the area will be adversely impacted upon by virtue of overlooking from the proposed development and consequent loss of privacy. The residents of No. 7A The Avenue (directly north of and adjoining the appeal site) are cited as being particularly affected by this issue as the mutual boundary wall is proposed to be lowered.

7.2.2. Having visited the site, I can confirm to the Board that the existing boundary wall running along the north boundary of No. 8 and the appeal site is approx. 2m in height which affords a degree of privacy to No. 7A The Avenue from the users of the existing rear garden of No. 8. The proposal is to demolish the existing boundary wall and to erect a 900mm boundary wall in its place which I consider would be too low a height to protect the privacy of neighbouring properties to the north of the appeal site.

7.2.3. I estimate the distance between the opposing windows of No. 7A and the proposed dwelling to be approximately 16.5m but the direct nature of the opposing windows would increase the perception of overlooking of the rooms within No. 7A and the area ancillary to the enjoyment of No. 7A in front of this house would be significantly overlooked by the proposed development were the walls to be reduced to 900mm in height. Should the Board be minded to grant permission for the proposed development I have included a condition to address the issue of the wall height.

7.2.4. It should be noted that there is a conflict between the site layout drawing which indicates a reduced wall height of 900mm and the contiguous north elevation which shows a 2m wall. The suggested condition in Section 10.0 below should resolve this conflict.

7.2.5. The potential overlooking from the ground floor windows of the proposed dwelling should be mitigated by a 2m high boundary wall and the existing screen planting at this location.

7.2.6. In summary, subject to the conditions drafted below, the proposed development should not cause overlooking or loss of privacy and hence the proposed development should not have an adverse impact on the residential amenity of the area.

7.3. Visual Impact

7.3.1. The design of the proposed dwelling is modern but not visually striking or imposing on the streetscape near the appeal site. The context is not an Architectural Conservation Area or in proximity to Protected Structures. Providing the boundary wall height is maintained as recommended in 7.2 above, and landscape screening is provided, the visual impact of the proposed dwelling on the receiving environment should be minimal.

7.3.2. I conclude on this basis that the proposed development will not adversely impact on the visual amenity of the area.

7.4. Vehicular Access

7.4.1. The appellant states that the cul-de-sac is currently used to accommodate parking generated by the neighbouring houses and that the congestion is so bad that parking occurs on the public open space adjacent to The Avenue and The Park. The appellant states that this situation is currently a potential traffic hazard and that the situation will be exacerbated by the proposed development, as the vehicular access to the proposed off-street parking space within the appeal site will result in the loss of on-street spaces and push parking elsewhere in the area.

7.4.2. I noted during the site visit that there were cars parked near where the vehicular access is proposed to be located and it is inevitable that spaces currently uses to park cars will be displaced should the development be constructed. The cul-de-sac is not a private parking area but is a road in the charge of Fingal County Council. There is no absolute right for residents of the area to park in the cul-de-sac but this situation has developed over time and there are no restrictions in place to stop said parking.

7.4.3. Notwithstanding the disruption that may be caused by the proposed development, it would not be appropriate to refuse permission for the proposed development on the grounds that it will lead to inconvenience for residents who have multiple cars per dwelling.

7.5. Services Provision

7.5.1. Fingal County Council and Irish Water have no objection to the proposed development on grounds of the capacity of water and sewage infrastructure servicing the area. The Third Party expressed concern during the determination of the application by Fingal County Council that this infrastructure could not cope with additional infill/backland for which the system had not been designed. Having regard to the reports of the Planning Authority and Irish Water, this issue can be considered to be resolved.

7.6. AA Screening

7.6.1. Having regard to the relatively minor development proposed within an existing housing estate and the distance from the nearest European site being approximately 2km, 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 planning permission be granted for the reasons and considerations set out below and subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Fingal County Development Plan 2023-2029, including the zoning objective for the site ('RS – Residential'), which seeks to provide for residential development and protect and improve residential amenity; it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, or of property in the vicinity, would provide an acceptable standard of amenity for future residents, and be acceptable in terms of traffic safety. The

proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 12th July 2022 and, subsequently, on the 30th August 2022, 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 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>Details of the materials, colours and textures of all 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>
3.	<p>The proposed boundary wall shall be retained at a height of 2m and details of the materials, colours and textures of said wall 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 and the protection of privacy.</p>
4.	<p>The proposed dwelling shall be provided with noise insulation to an appropriate standard having regard to the location of the site within Dublin Airport - Zone C.</p> <p>Reason: In the interest of residential amenity.</p>
5.	<p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p>

	Reason: In the interest of public health.
6.	<p>Surface water from the site shall not be permitted to drain onto the adjoining public road.</p> <p>Reason: In the interest of traffic safety.</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 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>
8.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security of a sum amount to be determined by the planning authority to secure the satisfactory protection of two street trees during the construction of the development.</p> <p>Reason: In the interests of tree protection, visual amenity and biodiversity.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution of 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, as amended. The contribution shall be paid prior to 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. The application of any indexation required by this condition</p>

	<p>shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Bernard Dee
Planning Inspector

24th May 2023