



An  
Bord  
Pleanála

## Inspector's Report ABP 315434-22

### Development

Permission for Retention of amendments to grant of permission under P.A. Reg. Ref. F18A/0753: Minor increase to footprint and floor area (32 sq. m.) and slight reorientation of House No 2, Lowering of Ground level at House No 2, Revised internal layout No 2.

Permission for completion of development to include amendments to elevations and materials to facilitate the revised internal layout and associated works.

### Location

Windgate Rise, Howth, Dublin 13.

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F22A/0561

### Applicant

Shaun Cox,

### Type of Application

Permission for Retention and Permission.

### Type of Appeal

Third Party

### Appellant

Joe Briody and John Lantry

### Date of Inspection

10<sup>th</sup> August, 2023.

### Inspector

Jane Dennehy.

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## 1.0 Site Location and Description

- 1.1. The proposed development which has a stated area of 700 square metres is that of one of a pair of detached infill houses for which permission was granted under P. A. Reg. Reg. F18A/0753. The original site is subdivided to form two separate sites located on the north side of Windgate Rise, and construction is well advanced. House No 2 of the permitted development which is subject of the current proposal is on the site formed east side and is adjacent to House No 1 on the site on the west side.
- 1.2. The Appellant party property at No 2 New Road is to the east and is on a corner site with New Road and Windgate Road. The Appellant Party property at No 3 New Road is to the north east and has a deep rear garden adjacent to the northern rear boundary of the site.
- 1.3. New Road, links Balkill Road to the north-east with Windgate Rise to the south. Carrickbrack Road (R405) the main route between Sutton and Howth Village and the Summit viewing point bus terminus and bar restaurant and carpark are to the east of Carrickbrack Road.

## 2.0 Proposed Development

- 2.1. The application lodged with the proposal indicates proposals for changes to the development of House No 2 under construction for which permission was previously granted under P. A. Reg. Reg. F18A/0753. (PL 305069)
- 2.2. Permission for completion of development to include amendments to elevations and materials to facilitate a revised internal layout and associated site and infrastructural works and,
- 2.3. Permission for retention of amendments to grant of permission under P.A. Reg. Ref. F18A/0753 comprising a minor increase to footprint and the floor area (32 sq. m.), a slight reorientation of the house, lowering of ground level and, revisions to the internal layout of the house. . House No 2 as permitted as a stated floor area of 140 square metres and the proposed increase in floor area provides for a stated floor area of 172 square metres.

## 3.0 Planning Authority Decision

### Decision

- 3.1. By order dated, 6<sup>th</sup> December, 2022, the planning authority decided to grant permission and permission for retention of the proposed development subject to conditions of a standard nature. Included under Condition No 3 is a requirement for fitting of opaque glazing in the east elevation window. Included under Condition No 6 is a requirement for a submission to the planning authority with three months of the date of the grant of permission for written agreement;-

A landscape plan, prepared by a qualified landscape architect with details for the eastern boundary screen planting,

The proposed and retained boundary treatments to include details of the finish for the 3.3 m high retaining wall on the western front garden boundary, screen planting equal to the previously permitted screen planting,

clarification of the retention of the existing roadside earth bank inclusive of protective fencing during construction works. The planting and boundary treatments are to be consistent with the Howth SAAO Design Guidelines.

### 3.2. Planning Authority Reports

- 3.3. The planning officer in his report states that he considers that the proposals in the application are modest and would not have undue impacts on the amenities of adjoining properties and the established character and visual amenities of the area.
- 3.4. The internal reports of the Waters Services Department, Transportation Department and the report of Irish Water indicate no objection to the proposed development subject to conditions.
- 3.5. The report of the Parks and Green Infrastructure Division indicates a recommendation for preparation of a landscape plan for written agreement with the planning authority for the purposes of clarifications inconsistencies on the site layout plan are noted in the report.

## 4.0 Planning History

- 4.1. P. A. Reg. Reg. F18A/0753. / PL 305069: The planning authority decision to grant Permission for two detached houses including House No 2 on the site subject of the current application and appeal. House No 2 as permitted as a stated floor area of 140 square metres. The conditions attached are standard in nature and include, under Condition No 5, a requirement for a landscaping and tree planting scheme which was submitted to the planning authority on 25<sup>th</sup> June, 2019 to be implemented within the first planting season following substantial completion of the external construction.
- 4.2. Permission for a prior application for a split-level dwelling was refused for reasons relating to the elevated site within the area of the SAAO and overlooking of adjoining properties. (P. A. Reg. Ref F00A/0043 refers.)
- 4.3. Two prior applications for two detached houses were withdrawn prior to determination of a decision. (P. A. Reg Refs F17A/0660 an F11A/0036 refer.)

## 5.0 Policy and Context

### Development Plan

- 5.1. The current operative development plan is the Fingal County Development Plan, 2023-2029 which was brought into effect in February 2023. It replaced the prior Fingal County Development Plan, 2017-2023 which was extant and applicable when the application was considered and a decision determined by the planning authority.
- 5.2. The site is subject to the zoning objective RS to provide for residential development and improve residential amenity and the Vision is to ensure that new development would have minimal impact on and would enhance existing residential amenity.
- 5.3. Development Management Standards are within Chapter 14 with housing development standards within Section 14.8.and Section 14.10 for Infill Development. Objective DMS 031 provides that *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.”*

- 5.4. The site lands are within Landscape Character Area described as coastal and ‘highly sensitive’ and there are specific objectives for preservation of views from Windgate Rise. The location is also within the buffer zone for the area of the statutory Howth SAAO within which Design Guidelines for New Buildings are under Policy 3.1.2 which allows for high quality contemporary design for buildings which are subordinate to the natural environment.

### **Natural Heritage Designations**

- 5.5. The Howth Head SAC (000202) is circa 200 metres to the east of the application site.

### **EIA Screening**

- 5.6. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

An appeal was lodged by Joe Briody of No 3, New Road, Howth on his own behalf and on behalf of John Lantry of No 2 New Road Howth on 23<sup>rd</sup> December, 2022 in which it is requested that the planning authority decision be overturned. It is stated that despite issue of enforcement notices to by the local authority the developer is continuing with construction and refuses to construct the development in accordance

with the conditions attached to the grant of permission under P. A. Reg. Ref. F18A/0753.

- Mr Briody disputes the applicant's claim to ownership of a one-metre-wide verge beside the east elevation of House Land No 1. A folio map is attached. The blue line for ownership also extends on the north elevation extends into lands within Mr Briody's property.
- Mr Lantry states that the house adjoining his property, is a considerable distance forward of the building line of house and this is unacceptable to him. The house is incongruous and out of place and will cause overlooking of the gardens at the front of his property. A flat roof could also be used and would overlook his property.
- Mr Lantry states that the east house (House No 2) is much closer to Mr Langtry's house is parallel to and 1.5 metres from the east boundary wall whereas the grant of permission specifies a distance of 1.978 metres from the boundary wall for the south-east corner and 3.3 metres for the north-east corner. A window will overlook a bedroom window at Mr Langtry's property and is intrusive.
- Mr Lantry states that the height requirements are breached in that the east elevation is higher than permitted and the foundations are not deep enough. It is not clear if the approved height for the ceilings, required to lower the elevation has been implemented.
- Mr Lantry states that the enlarged footprint would not leave enough space for screen planting. Mr Langtry requests that the applicant be required to implement the detailed shrub and tree planting scheme that was submitted with the original application for the permitted development under P.A. Reg. Ref. F18A/0753
- Mr Briody and Mr. Lantry both state that an increase of thirty-two square metres in floor area as proposed in the application for permission for retention is not a "minor" amendment as claimed in the application and it provides for two additional large rooms.

## 6.2. Applicant Response

A submission was received from the applicant's agent on 30<sup>th</sup> January, 2023 and a sunlight and daylight study is attached. According to the submission:-

- The issues in the appeal are the same as those raised in observer submissions on the application and were addressed in the planning authority assessment.
- The proposed amendments to the permitted development in the application do not affect surrounding residential amenities,
- The applicant has sought to ensure compliance with Part M of the Building Regulations in the amendments and to add a small home office to the internal accommodation.
- The realignment brings the footprint slightly closer to the boundary and is at a distance of 1.98 metres from the south corner and 3.31 metres from the northern corner of the boundary wall. The distance from the gable walls and corners of adjoining dwellings is in excess of 2.3 metres and consistent with DMS20 of the (then current) CDP and DM06 of the (then draft) CDP and an overhang is reduced in depth by 200 mm.
- The house has an improved relationship with the road and does not allow for overlooking from the south elevation to adjoining properties. Significant overlooking from the east elevation ground floor hallway of the single storey house would not occur and screen planting will take place. The opening for the bedroom window claimed to overlook the adjoining property is lower than previously permitted and the view is to the boundary at wall and tops of trees only at Mr Briody's property at No 3. No windows on the east elevation are for habitable rooms and the development accords with CDP standards regarding separation distances and overlooking as stated in the Planning officer report. No overlooking of private open space at adjoining properties will occur.
- There are boundary walls and provision for screen planting. The applicant intends to agree landscaping details, which will provide for additional screening, with the planning authority. It is requested that the issues raised with regard to landscaping plan be disregarded as the matter has been



addressed in condition No 6 attached to the planning authority decision which requires a scheme for the boundary planting to be submitted to the planning authority for agreement within three months of the date of the grant of permission and for compliance with the recommendations in the Howth SAAO Design Guidelines.

- The enlargement of the house accords with CDP standards for private open space in that there is provision for 180 square metres in area to the rear, floor plans, plot size, parking and all development management standards in the CDP. The enlarged footprint is distributed through the house which is reorientated and not much further south than previously permitted. A single large room extension would have a larger perceived bulk. reduces the perceived size. The proposed dwelling is modest in size and typical of developments in the Howth area.
- The floor heights internally contrary to assertions in the appeal have not been increased. The ground levels have been reduced by 275 mm. to provide for three split levels within the house. The west section of the split levels has not increased in height, but it has a singular height across the roof level. The east level retains the permitted height across the roof level and has the 200 mm reduction in the overhang. Reduced ground levels which were necessary following a structural engineering assessment on foundations has resulted in an increased floor height. The overall maximum height has not been increased. The planning officer had no concerns as to adverse impacts.
- The proposed development would not be overbearing and adjoining properties will receive daylight and sunlight levels which accord with the BRE standards in BRE 209 2022:Site Layout Planning for Daylight and Sunlight. (A study has been prepared and included with the response to the appeal.)
- Resolution of the dispute over the landownership in regard to the eastern boundary is not a planning issue to be taken into consideration However there is a discrepancy to between the site survey and land registry as regards at the boundary wall and the defined boundary which is to the advantage of the appellant.

- Any contention as to undermining of a boundary wall by spoil from the development are rejected as it is confirmed that the boundary walls are all intact and secure. Photographs included with the appeal are out of date. Measures were taken to ensure integrity of the wall at Mr Langtry's property, . The north boundary wall is structurally intact, and the foundations are separated at a distance so as not to cause damage.
- The amended alignment results in the house being parallel to the boundary wall providing for a better relationship with the road.

### 6.3. **Planning Authority Response**

In a submission received from the planning authority on 24<sup>th</sup> February, 2023 it is stated that it has no comments on the appeal.

## 7.0 **Assessment**

7.1. The issues central to the determination of a decision can be considered below under the following subheadings:-

- Title and Landownership
- Structural Stability – Boundary Wall.
- Realignment /reorientation of the house.
- Levels and Height
- Front Building Line
- Appropriate Assessment

### **Title and Landownership**

7.2. As indicated in the planning officer report, resolution of the dispute over title and the extent of the blue line shown for lands in the applicant's ownership is outside of the planning remit and can be resolved through the legal system. Under section 34.(13) of the Planning and Development Act, 2000, as amended, regarding entitlement to carry out a development for which permission has been granted.

### **Structural Stability – Boundary Wall.**

- 7.3. While similarly resolution a dispute between parties as to integrity or stability of boundary walls with adjoining properties would come outside the planning remit and could be resolved through the legal remit.

### **Realignment /reorientation of the house.**

- 7.4. There is no objection to the footprint for the dwelling as proposed which provides for an increase of thirty-two square metres in floor area and that the revision to the internal layout includes provision for a home office. While the proposed amendments locate the revised footprint eastwards, and closer to adjoining property at New Road, it is considered that it does not result in undue adverse impact on the residential amenities of the adjoining property. Furthermore, the separation distances between the walls of the proposed and adjoining dwelling exceeds the minimum requirement of 2.3 metres as provided for in the CDP.

### **Levels and height.**

- 7.5. It is considered that it has been demonstrated that the amended dwelling design has been provided for in the proposal by lowering the ground levels by a depth for deeper foundations as a result of which the previously permitted finished floor levels and building heights are unaltered. However, in the event of dispute as to whether the development as constructed is consistent with a permitted development is consistent with permitted development is a matter that can be raised with the enforcement section at a planning authority.

### **Front Building Line.**

- 7.6. The dwelling footprint as amended is forward of the building line of the adjoining property at No 2 New Road. This property is on a corner site at New Road and Windgate Rise and there is a deep setback between its footprint and from the frontage on both roads.
- 7.7. There is no objection to the proposed amended footprint in that it is not considered that it gives rise to any undue adverse impact on the amenities of the adjoining property given its limited height above the ground level and the low massing adjacent to the boundary. Furthermore, the front side boundary wall between the two properties is predominant in views towards the site from within the front curtilage

of No 2 New Road and it is to be supplemented on the application site by screen planting and an external finish as required with details subject to agreement with the planning authority by condition under the prior grant of permission.

It is also considered that, relative to that of the previously permitted development, the amendments proposed would not result in any significant difference as regards impact the visual amenities of the public realm or in terms of the location within the designated area of the Howth SAAO.

### **Landscaping and Screen Planting**

- 7.8. Notwithstanding the variation in footprint from that originally permitted, it is considered that requirements similar to those provided for under Condition No 6 of the original grant of permission satisfactorily addresses the requirements for screen planting for the proposed development as amended in the proposal and to provide for visual amenities, particularly having regard to the site location within the area of the SAAO. It is also noted that the external finish for the retaining wall on the west side boundary wall is to be agreed in writing with the planning authority according to Condition No 6 attached to the prior grant permission.

### **Overlooking.**

- 7.9. The east side elevation window, which faces directly to the boundary wall, and which would light a hall/corridor area with the adjoining property is considered acceptable. Given the boundary wall height and height above the floor level at which the window would exceed that of the boundary wall in front of which screen planting is to be added, the scope for potential overlooking of the adjoining property is restricted. However, it is agreed with the planning authority that a condition with a requirement for opaque glazing and that the window be fitted, (so that it is unopenable) be attached if permission is granted which would address overlooking and perceptions of overlooking.

### **Overshadowing.**

- 7.10. The daylight and sunlight study included with the appeal has been reviewed in which it is stated the methodologies in the updated BRE 209 (3<sup>rd</sup> edition 2022) Site Layout Planning for Daylight and Sunlight and BS EN Daylight in Buildings as been followed. It is noted that it is demonstrated in the study that marginal variation in impacts on the adjoining properties and rear private open space would be

attributable to the proposed development which would be well above the minimum standards for daylight and sunlight access.

#### **7.11. Appropriate Assessment Screening**

7.12. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area, the distance from and absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

### **8.0 Recommendation**

8.1. In view of the foregoing, it is recommended that the planning authority decision be upheld and that permission and permission for retention be granted based on the following reasons and considerations and subject to the conditions which follow.

### **9.0 Reasons and Considerations**

Having regard to the planning history, to the residential zoning and the established residential area in which the site is located, and, to the nature, form and extent of the amendments to the permitted development that are proposed, it is considered that subject to compliance with the conditions hereunder, the proposed development would not seriously injure the residential amenities of adjoining properties or the visual amenities of the area, would in accordance with the policies and objectives of the Fingal County Development Plan, 2023-2029, and the Howth Special Area Amenity Order, and that, as a result, the proposed development would be in accordance with the proper planning and sustainable development of the area.

### **10.0 Conditions.**

1. The development shall be completed in accordance with the plans and particulars lodged with the application, 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 the 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.

Reason: In the interest of clarity.

2. The development shall be in accordance with the terms and conditions attached to the grant of permission under F18A/0753, (ABP Ref 305069) save as for the amendments in the current application and the requirements of the conditions hereunder.

Reason. In the interest of clarity.

3. The east elevation window shall be glazed with obscure glass and shall be top hung pivot opening only.

Reason. In the interest of residential amenity.

4. Within three months of the date of the grant of permission, the developer shall submit and agree in writing with the planning authority a revised landscape plan to include full details of screen planting (which shall be in accordance with the Howth SAAO Design Guidelines), along all the site boundaries and, full details of the external cladding, (which be in natural 'Howth' stone) for the retaining wall along the front west side boundary. The stone cladding and planting scheme and shall be implemented within the first planting season following substantive completion of external construction.

Reason. In the interest of visual and residential amenities of the area.

*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.*

**Jane Dennehy**

Inspector

11<sup>th</sup> August, 2023.