



An
Bord
Pleanála

Inspector's Report ABP315930-23

Development	Provision of 4 no. 5 bedroomed semi-detached houses, vehicular access and services
Location	Knocklyon Road, Knocklyon, Dublin 16
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD22A/0444
Applicant(s)	Pathway Homes Ltd
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Pathway Homes
Observer(s)	None
Date of Site Inspection	28 th June 2023
Inspector	Andrew Hersey

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1.0 Site Location and Description

1.1. The proposed development is located on a greenfield site which fronts onto the Knocklyon Road in Knocklyon, Dublin. The site comprises of a rectangular grassed area with pedestrian footpaths on the western roadside and along the south of the site which leads through to Delaford Avenue, a suburban estate of 2 storey semi-detached houses. There are semi-mature trees located in the grass margin between the footpath and the Knocklyon Road. Boundary walls of the rear gardens of No's 33, 35, 37 and 39 delineate the eastern boundary of the site while the rear garden of 31 delineates the northern boundary of the site. There is a new school across the road to the west of the site with pull in bay off the Knocklyon Road.

2.0 Proposed Development

- 2.1. The proposed development comprises of 2 x 2.5 storey semi-detached dwellings (4 units) with rear gardens and a parking to the front with access onto the Knocklyon Road.
- 2.2. I note that revised drawings were submitted with the appeal which shows for a single vehicular entrance onto the Knocklyon Road. Rear gardens have been increased in size by circa 12sq.m. and internal floorspaces of the ground floor of the proposed houses have decreased by the same amount.

3.0 Planning Authority Decision

3.1. Decision

Refuse Permission for 3 reasons with respect of:

- That the said site is used for the purposes of open space and is subject to a Deed of Dedication
- Contravention of a condition of an existing permission on the site Planning Reg. Ref. C2040 (Knocklyon Wood Housing Estate) granted permission in 1971.
- Issues with respect of inadequate open space and traffic safety

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (dated 30th January 2023) reflects the decision of the Planning Authority.

3.2.2. Other Technical Reports

3.2.2.1. Roads - Concerns raised with regard to the two access proposed. Additional Information Required (30th January 2023)

3.2.2.2. Water Services – Additional Information Required (23rd January 2023)

3.2.2.3. Public Realm Department

- Recommend that permission be refused on the grounds that the site in question is dedicated public open space which has been maintained by South Dublin County Council for many years.
- The council has a Deed of Dedication for this land from the original developers of Knocklyon.
- That the proposal will result in the fragmentation of existing green infrastructure
- That the proposal would result in the loss of two mature street trees
- The proposal would overshadow an existing pedestrian/cycle route which extends from this open space to an extensive network of walking and cycling routes
- Open space contributes to the health and well-being of local communities, promotion of biodiversity and for areas for natural surface water management.

3.2.3. Irish Water (24/11/22) - further information required.

3.3. Submissions/Observations

There were 17 submissions on the planning file. In summary these relate to:

- That the site has a long established history for use as open space and that if permitted would leave no dedicated open space for the Delaford area.
- The proposed development will adversely affect the residential amenities of adjacent properties with particular respect of overlooking of adjacent gardens
- Concerns regarding overshadowing
- The size of the proposed houses would be out of character with the surrounding houses
- Traffic Safety - single vehicle access is not usual along this road. Impact on the use of the school layby.
- Loss of mature trees along the roadside
- Impact on wildlife
- The proposal could result in flooding of adjacent properties
- No play facilities in the area.

4.0 Planning History

4.1. The Site

The site comprises part of the Knocklyon Woods Housing Estate – Planning Reg. Ref. C2040 applies which was for 485 houses. Relevant planning conditions attached to this permission are as follows:

- Condition 15 - *The local amenity park and 5 No. Play spaces comprising in total some 3.71 acres be reserved for public open space, soiled, levelled, seeded, landscaped and made available for use by residents on completion of their dwellings*

This permission was subject to a third party appeal to the Board which was subsequently granted. Conditions imposed include:

- Condition 6 - *The local amenity park and five play places shown on the lodged plans shall be reserved as public open space and shall be soiled, levelled,*

seeded landscaped and made available for use by the residents of the houses and the estate

4.2. Adjacent to the site

Planning Reg. Ref. S18A/0372 granted permission for the Gaelscoil across the road from the proposed development site. This permission was modified under Planning Reg. Ref. S21A/0053. This development is now constructed.

5.0 Policy and Context

5.1. Development Plan

5.1.1. South Dublin County Development Plan 2022-2028

- The site is for the most part zoned as RES in the above plan the objective of which is *'To protect and improve residential amenity'*
- There is a small strip of land to the south of the site zoned as 'Open Space' the objective of which is *'To preserve and provide for open space and recreational amenities'*
- Policy H13 Residential Consolidation – Promote and support residential consolidation and sustainable intensification at appropriate locations, to support the ongoing viability of social and physical infrastructure and services and meet the future housing needs of the county
- H13 Objective 5 *'To ensure that new development in established areas does not unduly impact upon the amenities or character of the area.'*
- Policy COS5 Parks and Public Open Space Objective 7 - *To require at the sole discretion of the Planning Authority a pro-rata contribution in lieu of the provision of public open space where, due to the small size, configuration or location of a particular development or on sites with less than 3 units where it is not possible to provide for a functional open space on site*

- Section 12.6.8 sets out policy with respect of development on Infill sites. In summary the section states that development should be guided by:
 - The Sustainable Residential Development in Urban Areas 2009 and the companion Urban Design Manual
 - On small sites of less than 0.5ha or less proposals should integrate with the surrounding built form, surrounding density, material use and form
 - Reduced public open space and car parking can be considered
 - That existing residential amenity is not adversely impacted upon as a result of the proposed development

5.2. Relevant Government Guidelines

5.2.1. National Planning Framework 2040

- NPO 3a Deliver at least 40% of all new houses nationally within the built up footprint of existing settlements
- NPO 3b Deliver at least half of all these new houses in the five cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford
- NPO 35 Increase residential development in settlements through a range of measures including infill development schemes.

5.2.2. Regional and Spatial Economic Strategy for the Eastern and Midland Region 2019-2029

- RPO 4.3 Support the consolidation and re-intensification of infill/brownfield development sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs

5.3. Natural Heritage Designations

The site is not located within or adjacent to any Natural Heritage Designations nor is there any hydrological link to the same

5.4. EIA Screening

Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

A first party appeal was lodged by the applicant on the 27th February 2023.

6.1. Grounds of Appeal

- That the proposed development is compliant with national, regional and local planning policy with respect of the delivery of new housing in towns and cities.
- The provision of housing on the application site is acceptable in principle.
- That no evidence of the Deed of Dedication has been provided
- That the Deed of Dedication should be viewed as a secondary consideration to the development plan which zoned the site as 'RES'.
- The dedication of lands for open space is a civil rather than planning matter and the planning authority should have prioritised the zoning of the site over the Deed of Dedication
- The planning authority could have sought a contribution in lieu of the loss of open space
- That open space for the overall Knocklyon Housing Estate is being provided in the Dodder Valley Park located to the north of the site.
- That the site does not represent quality open space
- That the development of this site does not impact on the wider pedestrian connectivity in the area.
- The planning permission associated with the original housing estate on site is 52 years old and that it is disproportionate to rely on a condition of planning with respect of the protection of open space.

- Revised drawings have been submitted showing for additional private open space and amended layout to provide for a single vehicular access to the site.

6.2. Planning Authority Response

6.2.1. A response from the planning authority has been received on 28th March 2023. In summary the response states:

- That the Planning Authority remains unchanged with regard to its decision to refuse permission
- A copy of the Deed Of Dedication has been submitted. The response elaborates on the same by stating that: the Deed of Dedication, Thomas McInerney & Co. Limited created a public trust in respect of land attached to the Deed of Dedication whereby it gave up the use of land *to the public for use as public space or such other use or uses that the council in its discretion considers more beneficial to the interest of the public.*
- The response further states that the Deed of Dedication and an annexed drawing identifies the site as one of 5 'Play Spaces' and South Dublin Council wishes to continue to use this land as a public amenity, in the manner in which it was intended under the Deed of Dedication
- The site in question is used and maintained as open space under the Deed of Dedication. The councils Public Realm Department states that the site is dedicated public open space.
- With respect of the applicants proposal to increase private open space the council notes that narrow open strips to the side of and in between the proposed dwellings have been included in the calculation of private open space. The council states that these strips are not considered to be usable private amenity open space

6.3. Observations

6.3.1. Seven observations have been received. These are summarised as follows:

- Support the decision of South Dublin County Council

- That the proposal will result in traffic hazard which is further compounded by the presence of the Gaelscoil across the road from the proposed development site and the pull in bay associated with the same.
- That there is limited public transport in the area
- That the proposal will impact upon the residential amenities of adjacent properties by way of overlooking and overshadowing
- That the design and scale of the proposed dwellings is out of character with the surrounding area.
- Loss of mature trees
- Risk of Flooding
- Loss of Biodiversity
- That the Deed of Dedication of public open space should be accepted by the Board
- That the proposed development would contravene a condition of planning permission associated with the original Knocklyon Housing Estate.

6.4. Further Responses

6.4.1. No further responses have been received

7.0 Assessment

7.1. Introduction

7.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to relevant local development plan policies and guidance.

7.1.2. I am satisfied the substantive issues arising from the grounds of this third party appeal relate to the following matters-

- Amendments

- Zoning & Policy
- Issues regarding the 'Deed of Dedication'
- Contravention of Planning Conditions
- Visual Amenities
- Residential Amenities
- Traffic Safety
- Other Issues

7.2. Amendments

- 7.2.1. It is noted that the appellant has submitted revised drawings with the appeal document for the purposes of addressing the third reason for refusal which relates to issues regarding traffic safety and private open space proposals. With respect of traffic safety, the appellant is now proposing a single access off the adjacent public road whereas the initial plans submitted show for two entrances onto the public road. With respect of private open space provision, the revised plans include for the reduction of floorspace associated with each of the houses and the increase in private open space for each of the dwellings by circa 12sq.m.
- 7.2.2. I would consider that such amendments are material and I am of the opinion that if the planning authority were to receive the same that the applicant would be made readvertise the proposed development as per Article 35 of the Planning and Development Regulations 2001 (as amended) On this basis, I propose to assess this application on the basis of the plans submitted to South Dublin County Council and not the plans submitted with the appeal. I will however comment on the revised proposals throughout the course of this report and comment in particular on whether the revised proposals address the reasons for refusal.

7.3. Zoning & Policy

- 7.3.1. The proposed development is located for the most part on lands zoned as RES in the South Dublin County Development Plan 2022-2028 the objective of which is 'To

protect and improve residential amenity'. A strip of land along the southern boundary of the site is zoned as *'Open Space'*

- 7.3.2. The proposed development comprises of 2 pairs of semi-detached dwellings with parking to the front and private amenity space to the rear. These dwellings are located on the lands zoned as *RES* and there is a footpath located on the lands zoned as *'Open Space'*.
- 7.3.3. I would also consider this to be an 'Infill' site as defined in various planning policy documents
- 7.3.4. There is policy within the South Dublin County Development Plan 2022-2028 supporting increased housing density in suburban locations. This policy is enforced in the National Planning Framework 2040 and the Regional and Spatial Economic Strategy for the Eastern and Midland Region 2019-2029
- 7.3.5. With respect of the above zoning objective for the site and policies as set out in the statutory development plan for the area and national and regional policy with respect of increased residential densities in suburban locations on infill sites, I am satisfied that the principal of residential development is acceptable at this location.

7.4. Issues regarding the 'Deed of Dedication'

- 7.4.1. I note that the appellant is stated as being the owner of the site on documentation submitted with the appeal. The proposed development site was part of an overall planning application for the Knocklyon area and which comprised of 485 dwelling houses, Planning Reg. Ref. C2040 applies. This application was granted permission by the then council and on appeal to the Board. The then application showed for a local amenity park and 5 play spaces which were subject to a Deed of Dedication to the council, details of which have been submitted by South Dublin County Council in their response to the appeal. This deed, in summary, allowed for the use of these 5 play spaces as public open space, or for any other use the council at its discretion deems more beneficial to the interest of the public. The said development site subject of this appeal has been identified as one of these 5 play spaces. A drawing submitted by the council in the response to the appeal clearly shows this.

- 7.4.2. There is an internal report from the Public Realm department on file which states that the said area of land has been used and maintained as public open space by the council for a considerable period.
- 7.4.3. On this basis, I would consider that the established use on the site is that of open space.
- 7.4.4. I note the first party appeals argument that development plan zoning policy should take precedent over the 'Deed of Dedication' I further note that the 'RES' land use zoning objective also allows for the development of open space.
- 7.4.5. In this respect, the current open space is compliant with the zoning objective. I therefore do not concur with the first parties argument with respect of the Deed of Dedication.
- 7.4.6. I therefore agree with the planning authorities assessment with respect of upholding the Deed of Dedication and that the site should remain as open space.

7.5. Contravention of Planning Conditions

- 7.5.1. I refer to Planning Reg. Ref. C2404 which was for the original housing estate of 475 units on these lands and which incorporates the subject site. As stated previously, this development which was subject to a third party appeal was granted permission. Condition No. 6 of the permission stated:
- The local amenity park and five play places shown on the lodged plans shall be reserved as public open space and shall be soiled, levelled, seeded landscaped and made available for use by the residents of the houses and the estate*
- 7.5.2. The subject site is one of the five play spaces proposed. In this respect, the proposed development clearly contravenes condition no. 6 of Planning Reg. Ref. C2404.
- 7.5.3. I do not concur with the first party appeal which refers to the fact that the planning permission associated with the original housing estate on site is 52 years old and that it is disproportionate to rely on a condition of planning with respect of the protection of open space.
- 7.5.4. I am of the opinion that the said planning condition is valid until such a time as an application to amend the then decision is made by way of a planning application.

7.6. Visual Amenities

7.6.1. The proposed development comprises of 2 x 2 storey semi-detached pitched roof dwellings with attic accommodation. The overall height of the proposed houses are just over 10.3 metres being circa 4.0 metres higher than the adjacent properties in Delaford Avenue. The floorspace proposed is 167sq.m. and comprises of 5 bedrooms. While these units are higher than other residential buildings in the surrounding area, I do not consider them to be excessive in height and scale. The buildings are set back from the public footpath by way of a car parking area. Finishes proposed comprise of nap plaster with coloured brick detail, black slated roof and aluminium windows and doors to a selected colour. Photomontages of the same have been submitted with the application. I consider that the proposed houses are acceptable in terms of design and scale and integrate with other houses in the surrounding area.

7.7. Residential Amenities

7.7.1. This is the fundamental issue raised by the third parties specifically with regard to overlooking and overshadowing

7.7.2. With respect of overlooking concerns have been raised in the submissions on the application file and upon third party response to the appeal that first floor windows on the rear elevations of the proposed houses will result in overlooking of private rear gardens associated with 33, 35, 37 and 39 Delaford Avenue whom share the rear party boundary with the proposed development site. No 31 also shares the side boundary of its rear garden with the proposed development site.

7.7.3. I note in this respect that there is a distance of between 19.240 metres and 19.350 metres from opposing first floor windows. General planning practice would stipulate 22 metres. I refer to Section 3.13 of Appendix 1 of the South Dublin County Development Plan which relates to issues of Privacy. With respect to overlooking the plan section states:

A separation of 22m will normally be required above ground level between opposing windows serving private living areas (particularly bedrooms and living rooms). However, this rule shall be applied flexibly: the careful positioning and detailed design

of opposing windows can prevent invasion of privacy even with short back-to-back distances. Windows serving halls and landings do not require the same degree of privacy as say balconies and living rooms;

- 7.7.4. The separation distance between opposing first floor windows is below the normal requirement. I note in this respect that two first floor windows on the proposed houses serve 2 bedrooms.
- 7.7.5. In conjunction with the same, proposed garden depths are considerably short at just under 6.0 metres, though, I note that landscape screening in the form of pleached lime trees are proposed along the party boundary in order to prevent overlooking.
- 7.7.6. With respect of the above and notwithstanding any boundary treatment proposals, I consider that the proposed development based on the design submitted will result in the reduction of the residential amenity of the adjacent properties by way of overlooking.
- 7.7.7. With regard to potential to overshadow, I note that a daylight and sunlight assessment has been submitted with the application. The study shows that overshadowing of the opposing rear gardens will occur in the late afternoon in the Spring and Autumn. I consider that this degree of overshadowing will impact upon the residents of the adjacent houses. I would also consider that the trees proposed at the rear boundary wall will result in further shadowing of the opposing rear gardens
- 7.7.8. Regard is also had to the occupants of the proposed houses and the quantum of private open space afforded to each dwelling which is stated as being between 70sq.m. and 71.4sq.m. I note that amended drawings submitted with the appeal show for an increase in garden size of between 83sq.m and 85sq.m which has been achieved by way of a reduced ground floor plan.
- 7.7.9. I refer again to Section 3.13 of Appendix 1 of the South Dublin County Development Plan which relates to issues of Privacy. The section states that minimum private open space requirements for houses with 3+ bedrooms be a minimum of 60-75sq.m. With respect of the same I consider that the quantum of private open space provided to be acceptable in the drawings submitted with the application and the revised drawings submitted with the appeal documents. In this respect and if the Board are minded to granting the proposed development that the proposal be permitted as per amended drawings lodged to the Board on the 27th February 2023.

7.7.10. I conclude that there will be impacts to adjacent residential amenities by way of overlooking and overshadowing and by reason of the restricted rear garden depths proposed.

7.8. Traffic Safety

7.8.1. The proposal as per the drawings submitted to the Planning Authority included for two vehicular entrances to the proposed development site.

7.8.2. The report from the roads department on file raised concerns with respect of the two proposed entrance and recommended further information was required with respect of the proposal.

7.8.3. A refusal of permission was issued by the Planning Authority which included a reason for refusal with respect of insufficient information has been submitted in relation to the proposed vehicular accesses, to the satisfaction of SDCC's Roads Department

7.8.4. Revised drawings were submitted on appeal which showed for a single vehicular entrance to serve the proposed development with communal parking for the four proposed houses.

7.8.5. As stated previously, I consider that these amendments are material and such proposals should be in the form of a new planning application or at the very least readvertisement as per Article 35 of the Planning and Development Regulations 2001, as amended.

7.8.6. The roads report set out a number of requirements, amendments to the proposals which would be required before they could consider the development. The report from roads did not suggest that the proposal should be refused outright. I also note that the roads department did not raise any issues in the report regarding the location of the pull in bay serving the school opposite the proposed development site. On this basis, I am of the opinion that the location of this pull in bay did not present any traffic safety issues with the roads department of SDCC.

7.8.7. The roads report has been considered by the appellants and the amendments submitted with the appeal generally reflect the amendments to the proposals as required by the roads department in their report which included for reducing the number of accesses out onto the public road from two to one.

7.8.8. With respect of the same, I consider that the revised drawings with respect of traffic and traffic safety submitted with the appeal to be acceptable and that if the Board are minded to granting permission for the proposed development that the proposal should be implemented as per the drawings submitted on the 27th February 2023.

7.9. Other Issues

7.9.1. Concerns have been raised by both third parties and by the Public Realm Department in the council with respect of the loss of mature trees as a consequence of the proposed development. I note that there are four semi-mature trees along the roadside boundary and that two of these are required to be moved as a consequence of the proposal. While the loss is unfortunate, it is considered that compensation measures could be proposed to ameliorate the loss.

7.9.2. I further note that public open space has not been provided to serve the proposed development I consider that having regard to the infill nature of the site that lack of open space can be resolved by way of a monetary contribution. This is allowed for under Policy COS5 Parks and Public Open Space Objective 7 as set out under Section 5.1.1 above

7.10. Appropriate Assessment Screening

7.10.1. Having regard to the nature and scale of the proposed development, the distance from any European site and the 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.

8.0 Recommendation

I recommend that permission be refused for the following reasons:

9.0 Reasons and Considerations

1. The site on which the proposed development is proposed is located on lands which the subject to a '*Deed of Dedication*' which is a commitment with the

council that it remain for the purposes of public open space. In addition, the council have been maintaining this area as public open space for a considerable period. Having regard to the above, and notwithstanding, the 'RES' zoning objective on the site which allows for residential use, it is considered that the proposed development if permitted would result in the loss of existing amenity space which would have a negative impact on the residential amenities of the area, would have a negative impact on biodiversity and therefore would be contrary to the proper planning and sustainable development of the area.

2. The proposed development by reason of the inadequate rear garden depths, the restricted distance between opposing first floor windows of adjacent private properties and the overshadowing which will occur to the rear gardens of adjacent private properties would seriously injure the residential amenities of adjacent properties and would therefore be contrary to the proper planning and sustainable development of the area.
3. The proposed development by reason of the vehicular access arrangements to the site would result in traffic hazard on the adjacent public road.
4. The proposed development would materially contravene a condition attached to the permission for the existing Knocklyon Housing Estate which proposed for 5 No. Play Spaces, the proposed development site being one of these spaces. Condition No. 6 of the then permitted development stated that these spaces be reserved for public open space. The proposed development would therefore contravene this condition and would therefore be contrary to the proper planning and sustainable development 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

Andrew Hersey
Planning Inspector

28th July 2023