



An  
Bord  
Pleanála

## Inspector's Report ABP318044-23

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<b>Development</b>	Permission for detached 2 storey dwelling in side garden
<b>Location</b>	Side of 28 Birchdale Road, Kinsealy, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F23A/0432
<b>Applicant(s)</b>	Evan Millerick
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Evan Millerick
<b>Observer(s)</b>	Justin Behan Aidan Mullen Joe O'Reilly
<b>Date of Site Inspection</b>	9 <sup>th</sup> November 2023
<b>Inspector</b>	Andrew Hersey

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## **1.0 Site Location and Description**

- 1.1. The subject site is located at 28 Birchdale Road, Kinsealy, being a suburban estate located to the west of Malahide
- 1.2. The site comprises of a triangular shaped plot which appears to be the side garden of 28 Birchdale Road being a semi-detached dwelling. There is another semi-detached dwelling located to the south, No. 2 Birchdale Park.
- 1.3. The surrounding residential development is characterised by low density detached and semi-detached two-storey dwellings with front and rear gardens.
- 1.4. The subject site has a stated area of 0.0211 hectares and appears to be unkempt and derelict.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises of the following: Permission for
  - A detached two storey dwelling with a floorspace of 101.7sq.m.
  - Associated site works, landscaping and SUDS drainage details
  - New pedestrian gate and gate to side boundary wall

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse Permission for the following reasons;

1. The proposed development would remove the existing driveway and impede safe access to the neighbouring house at no. 28 Birchdale Road. This would seriously injure the amenities of the neighbouring dwelling and materially contravene Objective DMSO32 of the Final County Development Plan 2023-2029 and would therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to the zoning objective for the area, 'Residential' which seeks to 'provide for residential development and protect and improve residential amenity', the proposed development would severely infringe on the side building line set by the dwellings to the south at Birchdale Park; would be visually obtrusive on the streetscape; would seriously injure the amenities of the area and would therefore be contrary to the proper planning and sustainable development of the area.
3. The proposed house would be located one metre from the neighbouring house to the west, and as such would not provide adequate separation distances to the side walls of the neighbouring house. This would contravene Objective DMSO26 of the Fingal County Development Plan 2023-2029, would be detrimental to the amenities of the neighbouring dwelling and would be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- 3.2.1.1. The report of the Planning Officer (dated 4<sup>th</sup> September 2023) reflects the decision of the planning authority

#### **3.2.2. Other Technical Reports**

- 3.2.2.1. Transportation Planning Section (dated 28<sup>th</sup> August 2023) does not object to the proposed development. Additional Information is required.
- 3.2.2.2. Water Services (28<sup>th</sup> July 2023) – no objection
- 3.2.2.3. Irish Water (1<sup>st</sup> August 2023) - no objection subject to conditions
- 3.2.2.4. DAA (1<sup>st</sup> July 2023) - no objection subject to conditions

### **3.3. Submissions/Observations**

3.3.1. There are three submissions on file as follows:

- Thomas Doherty & Mr Adam Costello Doherty of 2 Birchdale Park, Kinsealy Court, Kinsealy, Co. Dublin (21<sup>st</sup> August 2023)
- OCF (21<sup>st</sup> August 2023)
- S. Boelsch (10<sup>th</sup> August 2023)

3.3.2. The issues raised with respect of the above submissions are as follows:

- The proposed dwelling breaks the building line established by the house on Birchdale Park
- Inaccuracies in measurements as shown on the submitted plans
- Flood Risk
- Overshadowing
- Overlooking from first floor windows
- That the proposed development encroaches onto the driveway of No. 28 Birchdale Road.
- The proposal is out of character with the area

### **4.0 Planning History**

4.1. There are a number of previous applications on the site as follows:

4.1.1. Planning Reg. Ref. FO8A/0637: Retention and completion of a detached two storey dwelling in the side garden with single storey extension to rear and off street parking. Permission and Retention Refused by Fingal County Council and by the Board (PL 06F.230241) on first party appeal for the following reason

- The proposed retention and completion of the detached two-storey dwelling on this prominent site of restricted size and configuration would be out of character with the prevailing pattern of development in the area, would seriously infringe the established building line set by dwellings to the south at Birchdale Park and

would be visually obtrusive in the streetscape. The development proposed for retention and completion would seriously erode the established character and visual amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

4.1.2. Planning Reg. Ref. F07A/1455: Retention and completion of a detached two storey dwelling in the side garden refused by Fingal County Council

4.1.3. Planning Reg. Ref. F02A/0236: Permission for a 2 storey detached dwelling with off street parking to side. Permission granted.

## **5.0 Policy and Context**

### **5.1. Development Plan – Fingal County Development Plan 2023-2028**

5.1.1. The Fingal County Dublin Development Plan 2023-2028 is the relevant County Development Plan for the area.

5.1.2. The site is zoned with the objective RS “To Provide for residential development and protect and improve residential amenity” in the Fingal County Development plan 2023-2029.

5.1.3. The vision of the objective is to “Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity”

5.1.4. 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.

5.1.5. Objective DMSO19 - New Residential Development: Require that applications for residential developments comply with all design and floor area requirements set out in:

- Quality Housing for Sustainable Communities - Best Practice Guidelines 2007,

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009, the companion Urban Design Manual - A Best Practice Guide, DEHLG 2009, Sustainable Urban Housing: Design Standards for New Apartments 2020..

5.1.6. Objective DMS032 - Infill Development on Corner / Side Garden Sites: Applications for residential infill development on corner/side garden sites will be assessed against the following criteria:

- Compatibility with adjoining structures in terms of overall design, scale and massing. This includes adherence to established building lines, proportions, heights, parapet levels, roof profile and finishing materials.
- Consistency with the character and form of development in the surrounding
- Provision of satisfactory levels of private open space to serve existing and proposed dwelling units. Ability to safeguard the amenities of neighbouring residential units.
- Ability to maximise surveillance of the public domain, including the use of dual frontage in site specific circumstances.
- Provision of side/gable and rear access arrangements, including for maintenance.
- Compatibility of boundary treatment to the proposed site and between the existing and proposed dwellings. Existing boundary treatments should be retained/ reinstated where possible.
- Impact on street trees in road-side verges and proposals to safeguard these features.
- Ability to provide a safe means of access and egress to serve the existing and proposed dwellings.
- Provision of secure bin storage areas for both existing and proposed dwellings.

5.1.7. Objective DMS026 - Separation Distance between Side Walls of Units

- 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)

5.1.8. Objective DMS027- Minimum Private Open Space Provision: Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows: 3 bedroom houses or less to have a minimum of 60 sq. m. of private open space located behind the front building line of the house.

5.1.9. Section 14.4.8 Building Lines: In achieving a high quality of design within the public realm, the Council will seek to ensure that development is not carried out in front of established building lines, or in a position that would conflict with a building line. The form and pattern of extant development and relationship to existing building lines should also be considered in all new proposals.

## **5.2. Natural Heritage Designations**

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

## **5.3. 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**

### **6.1. First Party Appeal**

- 6.1.1. A first party appeal was prepared by Paul Sheehy on behalf of the applicant and was lodged on the 18<sup>th</sup> September 2023.

### **6.2. Grounds of Appeal**

- That the driveway to 28 Birchdale Road is owned by the applicant. The land was legally divided between 28 Birchdale Road and the proposed development site and this was done so by the previous owner.
- No 28 Birchdale Road is not at present occupied
- That the applicant will cooperate with the owners of No 28 Birchdale Road with respect of developing a pedestrian and/or vehicular entrance to that property.
- That the applicant will allow access to No 28 Birchdale Road over the existing driveway which he owns until such a time as No. 28 develops their own access.
- There would be no impact upon adjacent properties as a consequence of the proposal
- That there are other properties in the area which break the building line and which have planning permission. Examples where the building line has been breached are cited and relate to developments in Malahide and Kinsealy. The breaches of these permitted developments are between 5 metres and 7 metres. The breach of the building line subject of the site subject of this appeal is around 4.9 metres
- The appellant knows of no other case where the desired separation distance of 2.3 metres has been met with respect of infill side garden developments. The appellant cites similar developments granted in the area where this threshold has not been adhered to.
- There is also a handwritten letter from the applicant which states that he wishes to build a house for himself in the area which he grew up. He states that he works and socialises in the area.

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

- The Planning Authority lodged a response to the appeal on the 11th October 2023 which requests that the Board uphold the decision of the Planning Authority

### **6.4. Observations**

There are three observations on file as follows:

- Justin Behan of 25 Birchdale Road (received 10<sup>th</sup> October 2023) supports the proposed development and that the house, if developed, will be resided in by the son of a local family and that it will resolve the issue of the site being derelict.
- Aidan Mullen (received 12<sup>th</sup> October 2023) generally supports the proposed development on the grounds that it would resolve the issue of dereliction on the site and that it would allow the son of a local family to live in the area. It is also recommended that if granted permission that a condition be imposed to allow for only 1 car parking space on the site. With respect of the building line it is states that porches on the front of buildings already break building lines.
- Joe O'Reilly (received 12<sup>th</sup> October 2023) states that a house on the site would resolve the issue of dereliction.

### **6.5. Further Responses**

- DAA (3<sup>rd</sup> October 2023) refers to the observation made to the Planning Authority on the 25<sup>th</sup> July 2023 and that they request the Board to take that previous observation into consideration.

## **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 the relevant local development plan policies, history files and other relevant guidance documents.
- 7.1.2. I am satisfied the substantive issues arising from the grounds of this first party appeal relate to the following matters:
- Principle
  - Compliance with Development Plan objectives
  - Visual Amenities
  - Residential Amenities
  - Parking and Access

### **7.2. Principle**

- 7.2.1. The proposed development is located on lands zoned as RS in the current County Development Plan where it is the objective of the council “To provide for residential development and protect and improve residential amenity”
- 7.2.2. The proposed development comprises of a single detached dwelling which is to be located on a derelict plot at the junction of Birchdale Road and Birchdale Park, Kinsealy.
- 7.2.3. It is noted that residential use is considered to be a use which is ‘permitted in principle’ on lands zoned as RS in the Fingal County Development Plan 2023-2029.
- 7.2.4. With respect of the same I consider that a dwelling on this site as proposed is acceptable in principle.

7.2.5. I also refer to Objective SPQHO42 which seeks to promote the development of underutilised infill, corner and backland development sites in existing residential areas subject to the character of the area and environment being protected.

7.2.6. With respect of the above, and having regard to the infill nature of the site I consider that there is a clear policy to support the development of such a site for residential purposes. This is further supported in regional and national planning policy.

### **7.3. Compliance with Development Plan Objectives**

7.3.1. The following objectives are relevant to the subject application

- Objective DMS032 - Infill Development on Corner / Side Garden Sites of the current development plan
- Objective DMS027- Minimum Private Open Space Provision: Ensure a minimum open space provision for dwelling houses (minimum 60 sq.m. behind front building line of house).
- Section 14.4.8 Building Lines: In achieving a high quality of design within the public realm, the Council will seek to ensure that development is not carried out in front of established building lines, or in a position that would conflict with a building line. The form and pattern of extant development and relationship to existing building lines should also be considered in all new proposals.

7.3.2. With respect of Objective DMS032 above, infill sites are assessed against the following criteria

- Compatibility with adjoining structures in terms of overall design, scale and massing. This includes adherence to established building lines, proportions, heights, parapet levels, roof profile and finishing materials.
- Consistency with the character and form of development in the surrounding
- Provision of satisfactory levels of private open space to serve existing and proposed dwelling units. Ability to safeguard the amenities of neighbouring residential units.

- Ability to maximise surveillance of the public domain, including the use of dual frontage in site specific circumstances.
- Provision of side/gable and rear access arrangements, including for maintenance.
- Compatibility of boundary treatment to the proposed site and between the existing and proposed dwellings. Existing boundary treatments should be retained/ reinstated where possible.
- Impact on street trees in road-side verges and proposals to safeguard these features.
- Ability to provide a safe means of access and egress to serve the existing and proposed dwellings.
- Provision of secure bin storage areas for both existing and proposed dwellings.

7.3.3. With respect of the above, the proposal generally meets the above stated requirements.

7.3.4. The prevalent issue in previous applications on the site and an issue which formed the basis of one of the reasons for refusal is with respect of the proposal not adhering to the established building line. This issue is also raised by the third parties.

7.3.5. In terms of the building line onto Birchdale Road, the line is maintained with No. 28. With respect of the building line on Birchdale Park, it can be said that the line of the proposed dwelling goes forward of the building line of Birchdale Park. However, it can also be said that the building line of Birchdale Park is already staggered with No. 2 slightly forward of No. 4. I see no reason as to why the proposed dwelling cannot be slightly forward of No 2 subject to the protection of the residential amenities of No. 2 which is discussed further below. In any respect the building line of the proposed house is only marginally forward of No. 2 and I would consider that this deviation would not have a significant impact upon the visual amenities of the area. In this respect, I consider that the deviation from the building line is not a strong enough reason to warrant a refusal of permission. I would consider that the overarching policy of

densifying suburbia and building on redundant spaces far outreaches the minor impacts that would result as a consequence of deviating from an existing building line.

- 7.3.6. With respect of amenity spaces afforded to occupants of the proposed house, I note that an 89sq.m. rear garden is proposed which I consider acceptable and in accordance with Objective DMS027 above.

#### **7.4. Visual Amenities**

- 7.4.1. The proposed development is a simple building which in terms of scale and material finishes is similar to that of adjacent dwellings. In this regard I do not consider that there will be an impact on the visual amenities of area as a consequence of the proposed house

#### **7.5. Residential Amenities**

- 7.5.1. It is noted that the rear of the house faces towards the gable of No. 2 Birchdale Park and that the rear garden of the house separates the two buildings and is 7.316 metres from the gable of the No. 2. I note the gable of No. 2 is a blank gable with no openings on the same.
- 7.5.2. The two windows proposed at first floor will face towards this gable and as such I consider that there will not be any impact to No. 2 Birchdale Park as a consequence of the same.
- 7.5.3. With respect of No. 28 Birchdale Road, I note that the western elevation of the proposed dwelling is to be constructed directly adjacent if not on the bounds of the site. This will still allow for access to the rear garden of No. 28. The proposed house does stretch back beyond the rear building line of No. 28 which will result in the loss of some morning light to the back garden of the same but it will not prevent sunlight from entering the rear garden of No. 28 for most of the day.
- 7.5.4. With respect of the foregoing, I consider that there will be no impacts with respect of overlooking and that the impact with respect of overshadowing is negligible.

- 7.5.5. Regard also must be had to Objective DMS026 - Separation Distance between Side Walls of Units which states that there should be a minimum of 2.3 metres between buildings but that this 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
- 7.5.6. I note that the site in question is an infill and under-utilised development site and as such there is scope to reduce this standard. I see no merit in having to keep 2.3 metres between the proposed house and No. 28 – increasing the separation distance will not reduce any impact upon the residential amenities of No. 28 and will only result in pushing the proposed house further out towards Birchdale Park further infringing on the building line. In this respect, I consider that the proposed 1.0 metre distance from the proposed dwelling to No. 28, which is below the threshold as required under Objective DMS026 is appropriate in this context and certainly does not warrant a reason for refusal in this instance.

#### **7.6. Access and Parking**

- 7.6.1. Access to the site is to be via the existing vehicular access to No 28 Birchdale. I note that the red line boundary includes for this existing access. The applicant states that he owns this existing access and it would appear that this is the case having inspected the online land registry website.
- 7.6.2. I note that the maximum car parking requirement for a 3 bed house is 1.5 spaces (as per Table 12.26 of the Fingal County Development Plan 2022-2028).
- 7.6.3. I further note that the report from Transportation Planning states that there is no objection to the proposal.
- 7.6.4. The fundamental issue here is that even though the applicant owns the access to No. 28, granting permission for the proposed development as it is currently proposed will effectively remove the vehicular access for No. 28 which is undesirable and not in the interests of proper planning of the area

7.6.5. With respect of the above, and notwithstanding the fact that the applicant owns the existing access into No. 28, I am of the opinion that permission cannot be granted where a vehicular access to an existing house is removed. The applicants agent suggests in the appeal that an arrangement can be made with the owners of no. 28 with respect of sharing the said entrance. While this may be possible, I consider that written confirmation from the owners of No. 28 is necessary and that a revised planning application would be required.

7.6.6. There may be scope to relocate the access on the site, but I would consider that this would require a revised application and the arrangement of private open space and car parking would need to be examined further with respect of the revised access

### **7.7. Appropriate Assessment Screening**

7.7.1. 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**

8.1. I recommend that permission be refused for the following reason;

### **9.0 Reasons and Considerations**

1. The proposed development would remove the existing driveway and impede safe access to the neighbouring house at no. 28 Birchdale Road. This would seriously injure the amenities of the neighbouring dwelling and would therefore contravene the 'RS' land use zoning objective for the site as set out in the Fingal County Development Plan 2022-2028 which seeks to 'Provide for residential development and protect and improve residential amenity' The proposed development would impact upon the amenity of the adjacent property by removing its vehicular access 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

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Andrew Hersey  
Planning Inspector

22<sup>nd</sup> November 2023