



An
Bord
Pleanála

Inspector's Report

ABP-318261-23

Development	Construction of 6 no. houses, access, connection to services infrastructure and all ancillary works
Location	Southwinds, Ulverton Road, Dalkey, Co. Dublin, A96 XT80
Planning Authority	Dun Laoghaire Rathdown Co. Co.
Planning Authority Reg. Ref.	D23A/0325
Applicant(s)	Eileen O'Sullivan
Type of Application	Permission
Planning Authority Decision	Refusal of permission for 2 no. reasons
Type of Appeal	First Party
Appellant(s)	Eileen O'Sullivan
Observer(s)	(1) Derek Jago, (2) Felix and Kathleen McTiernan, (3) Joseph Campbell
Date of Site Inspection	22 nd December 2023
Inspector	Bernard Dee

1.0 Site Location and Description

The appeal site is located within the urban area of Dalkey, Co. Dublin in a backland site located to the east of and accessed from Ulverton Road via an unsurfaced private laneway. The site currently lies undeveloped and access to the site was not possible during the site inspection due to the presence of security fencing. The topography of the site is broadly level and overgrown with grass and shrubs. The access lane also serves two occupied and one vacant house and a number of garages and sheds.

2.0 Proposed Development

It is proposed to construct 6 no. two storey detached houses with mansard roofs and 2 no. parking spaces per house. Site works including boundary treatment, upgraded access road, connections to mains water and sewage infrastructure and including ancillary works.

The access road is primarily two-way with a single lane section midway between Ulverton Road and the appeal site proper measures between 5.25m and 4.52m in width. A footpath measuring 1.2m in width runs along the north side of the access road.

The proposed housing scheme was modified on foot of a Further Information request, and I refer the Board to the appeal file for details of same.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused on 20th September 2023 for two reasons:

- 1. Having regard to the location and layout of the site access and the proposal, it is considered that the proposal would lead to endangerment of public safety due to the lack of adequate visibility for vehicles on R119 Ulverton Road, an existing bus route, for an exiting vehicle from the new vehicular entrance. Therefore the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise.*

2. *Having regard to the location and layout of the site access and the proposal, it is considered that the proposed development would lead to endangerment of pedestrians and vulnerable road users, due to the lack of adequate footpath facilities from the development to R119 Ulverton Road. Therefore the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise.*

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planner's Report on file, following the submission of Further Information on 24th August 2023, in summary, had regard to the following planning issues:

- Residential use is permitted in principle under the A zoning objective which seeks *"to provide residential development and improve residential amenity while protecting the existing residential amenities."*
- The proposed development represents a density of 26 units per hectare which is considered an appropriate density at this infill development location.
- Space standards of the proposed dwellings and private amenity spaces attached to each are in compliance with Development Plan standards set down in Chapter 12.
- There are no significant concerns with regard to separation distances or shadow cast associated with the proposed layout nor with regard to servicing the proposed development.
- The mansard roof design, an attempt to blend in with surrounding single storey dwellings, is a deviation from the existing architectural style in the vicinity of the application site but is acceptable in this infill context.
- Neither Appropriate Assessment nor Environmental Impact Assessment is necessary in connection with the proposed development.

The Planner's Report specifically in relation to the 7 no. items contained in the Further Information request makes the following points regarding the responses received by the Planning Authority.

- Item 1 - redesign House 7 on southern boundary of site to prevent overlooking of neighbouring properties: acceptable.
- Item 2 – lack of landscaping on eastern boundary of site to minimise the visual impact of Houses 3, 4 and 5 from views from Barnacollie Park to the east: acceptable.
- Item 3 – clarification of right of way/easement to the common access lane onto Ulverton Road: acceptable.
- Item 4 – revised drawings relating to the access road and access point onto Ulverton Road: not acceptable having regard to the assessment of the Transportation Planning section [see section 3.2.2 below].
- Item 5 - revised drawings showing achievable sightlines at the access point onto Ulverton Road: not acceptable having regard to the assessment of the Transportation Planning section [see section 3.2.2 below].
- Item 6 – proof of compliance with Part V requirements: acceptable.
- Item 7 – submit details of an Operational Waste Management Plan: acceptable.

3.2.2. Other Technical Reports

Following the submission of Further Information on 24th August 2023.

- Transportation Planning – recommends refusal for two reasons:
 1. Endangerment of Public Safety due to the lack of adequate visibility for vehicles on R119 Ulverton Road an existing bus route for an exiting vehicle from the new vehicular entrance - i.e. the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise, as per Clause 4 of the FOURTH SCHEDULE (Reasons for the Refusal of appropriate Permission which Exclude Compensation) of the Planning and Development Act, 2000.

2. Endangerment of pedestrians and vulnerable road users due to the lack of adequate footpath facilities from the development to R119 Ulverton Road - i.e. the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise, as per Clause 4 of the FOURTH SCHEDULE (Reasons for the Refusal of appropriate Permission which Exclude Compensation) of the Planning and Development Act, 2000.

- Housing Department – applicant needs to comply with Part V requirements and has not done so to date despite several consultations with the Housing Department.

3.2.3. Prescribed Bodies

- Irish Water – no objection.
- EHO – no objection.

3.2.4. Observations

Multiple submissions were received in relation to this application at the initial and port Further Information stages. The submissions rest on similar ground as the 3 no. Observations received in relation to this current appeal which are summarised in Section 6.0 of this Inspector's Report below.

4.0 Planning History

4.1. On the Appeal Site

- Ref. D22A/0638: 6 no. dwelling houses and associated works refused for reasons relating to the inadequate design of the proposed development being in breach of Development Plan design standards. The Board should note that this application is the subject of a concurrent planning appeal - ABP-315065-22.
- D17A/0797: Revised design and siting of dwelling house granted under D06A/1619/E refused on grounds of piecemeal development in isolation of the development of land to the east and northeast, injure amenities or depreciate value of properties in vicinity.

4.2. In the Vicinity of the Site

- Southwinds Bungalow (Shown on Submitted Site Layout as 'Existing Bungalow 1'). There are a number of planning history cases (2005-2010) pertaining to this bungalow, which adjoins the NW boundary of the redline boundary.

5.0 Policy and Context

5.1. Development Plan

The Dun Laoghaire Rathdown County Development Plan 2022-2028 was adopted on the 9th and 10th of March 2022 and came into effect on the 21st April 2022. This is the relevant statutory plan for the area.

The site is zoned Objective A for which the objective is to *“to provide residential development and improve residential amenity while protecting the existing residential amenities”*.

The laneway aligns with the northwestern boundary of the Architectural Conservation Area for Dalkey Village and the subject lands lie outside of the zone of archaeological potential for the centre of Dalkey (DU023-023).

Development Plan policy objectives PHP3 (Planning for Sustainable Communities), PHP18 (Increasing housing supply and promotion of compact urban growth through consolidating and re-intensifying of infill/brownfield sites), PHP19 (small infill development), PHP20 (Protection of existing residential amenity), PHP35 (Healthy Placemaking/Attractive Places), PHP40 (Shared Space Layouts), E16 (Sustainable Drainage Systems (SuDs), HER13 & HER21 (Protection of Architectural Conservation Areas) and Development Standards (Sections 12.3 Neighbourhood - People, Homes and Place [12.3.7.6 Backland & 12.3.7.7 Infill, 12.4 Transport, 12.8 Open Space and Recreation (incl. Boundaries), 12.9.4 Construction Management Plan and 12.9.10.2 Street Lighting] are also relevant to the consideration of this appeal.

Section 12.3.7.6 Backland Development (Development Management Standard)
Where the Planning Authority accepts the general principle of backland residential development to the rear of smaller, more confined sites, within the existing built -up

area, the following standards will apply:

- Generally, be single storey in height to avoid overlooking.
- Appropriate scale relative to the existing dwelling and of high quality of design.
- Adequate vehicular access of a lane width of 3.7 metres must be provided to the proposed dwelling (3.1 metres at pinch points) to allow easy passage of large vehicles such as fire tenders or refuse collection vehicles.
- A wider entrance may be required to a backland development to or from a narrow laneway.
- Existing dwelling and proposed dwellings shall have minimum individual private open spaces - exclusive of parking - of 48 sq.m. each for one/ two-bedroom units, or 60 sq.m. plus for three/ four or more-bedroom units.
- Proposed single storey backland dwelling shall be located not less than 15 metres from the rear façade of the existing dwelling, and with a minimum rear garden depth of 7 metres.
- Proposed two storey backland dwellings shall be located not less than 22 metres from the rear façade of the existing dwelling where windows of habitable first floor rooms directly face each other.
- Proposed two-storey backland dwellings should have a minimum rear garden depth for the proposed dwelling of 11 metres.
- A relaxation in rear garden length, may be acceptable, once sufficient open space provided to serve the proposed dwelling and the applicant can demonstrate that the proposed backland dwelling will not impact negatively on adjoining residential amenity. Where there is potential to provide backland development at more than one site/property in a particular area, the Planning Authority will seek to encourage the amalgamation of adjoining sites/properties in order to provide for a more comprehensive backland development, this should be discussed at pre-planning stage. Piecemeal backland development with multiple vehicular access points will not be encouraged.

12.3.7.7 Infill (Development Management Standard)

In accordance with Policy Objective PHP19: Existing Housing Stock – Adaptation, infill development will be encouraged within the County. 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. This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th century suburban ‘Garden City’ planned settings and estates that do not otherwise benefit from ACA status or similar. (Refer also to Section 12.3.7.5 corner/side garden sites for development parameters, Policy Objectives HER20 and HER21 in Chapter 11).

5.2. Natural Heritage Designations

The following natural Heritage designations are located in the vicinity of the appeal site:

- Dalkey Coastal Zone and Killiney Hill pNHA (001206).
- Dalkey Islands SPA (004172).
- Rockabill to Dalkey Island SAC (003000).

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and 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. Grounds of Appeal

The grounds of appeal relating to the reasons for refusal are, in summary, as follows.

- The Planning Authority has confirmed as it had for the previous application D22A/0658 (currently on appeal ABP-315065-22) that residential development at this infill site is acceptable in principle including access onto Ulverton Road.
- With reference to the issue of access, this current application has had regard to section 12.3.4.1 of the Development Plan, essentially DMURS, which allows for flexibility in the design of access points for site specific reasons.
- The Transport Planning section required drawings demonstrating that adequate sightlines could be achieved at the access point and a report by Trafficwise, Traffic and Transport Solutions was submitted as part of the Further Information response.
- This Trafficwise report noted the relatively restricted sightlines at the access point but that a 60m sightline to the south (left) was achievable (Section 2.5.2.3 of the Trafficwise Report). The Transport Planning section deemed the Further Information submitted inadequate and recommended a refusal of permission on the basis of an unsafe access provision.
- The Transport Planning section made no reference to the Trafficwise report or to the covenant which requires the owners of 56 Ulverton Road (to the north, right, of the access point) not to interfere with any available sightlines relating to access to the appeal site.
- Primarily, the sightline to the right is to be maintained by restricting the height of the wall of 56 Ulverton Road to a maximum of 1.1m. The Transport Planning section appears to have made its recommendation based on earlier designs of the access and on out-of-date information.
- The Appellant would accept a condition regarding traffic safety and sightlines having regard to the covenant in place.

- The access is intended to be a shared surface for cars and bicycles and as this is to be in essence a gated community so the sharing of space would be acceptable.
- The requirement for a Construction Management Plan, the treatment of domestic waste and compliance with Part V have been addressed by the applicant.
- The development of this infill site for residential development is in compliance with local and government guidance to increase the density of existing urban areas on zoned and serviced land.

6.2. Planning Authority Response

- The Planning Authority response states that nothing contained in the First Party appeal would justify a change of attitude to the proposed development.

6.3. Observations

NOTE: The majority of comments in the three Observations go into extreme detail which I have had regard to in my assessment of this case but have not listed below in the interests of making this report readily legible. I direct the Board to the Observations on file. References by Observers to the validity of the application have not been listed below as this is an issue outside the remit of the Board which does not have validation or invalidation powers.

Observations were received from three parties who, in summary and collectively, made the following points in relation to planning issues associated with the proposed development.

- House 7 which was redesigned as per Item 1 of the Further Information response still causes overlooking of properties to the south.
- The ownership of the laneway which was the subject of Item 3 of the Further Information response still remains unresolved.
- Laneway user safety as per Item 4 of the Further Information response has still not been adequately addressed and the Further Information drawings and those submitted with the appeal do not address the correct assessment of the Transport Section. The proposed design and layout of the access especially

at the junction with Ulverton Road represent a traffic hazard as presently designed.

- Sightlines which were the subject of Item 5 of the Further Information response, notwithstanding the Trafficwise report, are still inadequate and represent a traffic hazard. The achievable sightlines do not meet DMURS standards and the Trafficwise report contains factual errors (setback of entrance from road, road width) which contaminates the validity of the findings of their report.
- The Operational Waste Management Plan which was the subject of Item 7 of the Further Information response will not operate as outlined due to the overdevelopment of the site, the layout of the houses and the inadequacy of the laneway to accommodate usage by refuse trucks.
- The present proposal does not represent an improvement over the previous application which was refused by the Planning Authority and is currently on appeal (D22A/0638/ABP-315065-22) as the current proposal contains a higher quantum of floor space, less public open space and a worse design than previously proposed.
- Ulverton Road is a Regional Road servicing a bus route on a relatively narrow road which increases the traffic hazard risk at the entrance to the laneway because of inadequate sightlines. 50m sightlines are required by DMURS but only 33m to the left and 28m to the right are achievable.
- The suggestion by the Appellant that sightlines to the right can be achieved by the enforcement of the covenant on No. 56 is legally unenforceable and it is doubtful if such covenant exists.
- The development of 6 no. houses on this small site with an inadequate and dangerous access constitutes an overdevelopment of the site and the proposal is therefore not in compliance with the zoning objective A which seeks to provide residential development and improve residential amenity while protecting existing residential amenities.

- The proposed development has not been adequately assessed in terms of its potential adverse impacts on the flora and fauna on the site and in the vicinity of the site.

6.4. Further Responses

- Not applicable.

7.0 **Assessment**

- 7.1. Initially I wish to address some procedural issues for the benefit of the Board in terms of clarification. This appeal, ABP-318261-23 (D23A/0325), and appeal ABP-315065-22 (D22A/0638) both relate to the same site and also propose essentially the same development, i.e. 6 no. houses, access and ancillary works. Both proposals would be accessed via the same private laneway. The only substantive difference between the two proposals is that in case ABP-315065-22 (D22A/0638) the 6 no. houses are two storey and, in this appeal, ABP-318261-23 (D23A/0325), the house design has been altered to reduce the height (but not the footprint) to a one and a half storey house design. This has been achieved by the use of mansard roofs in the redesign of the houses in this current appeal.
- 7.2. ABP-318261-23 (D23A/0325), and appeal ABP-315065-22 (D22A/0638) were both refused by the Planning Authority. This current appeal was refused for two reasons relating to traffic hazard whereas case ABP-315065-22 (D22A/0638) was refused because the design of the 6 no. houses would not be in accordance with the standards set down in Section 12 of the Development Plan. No reference to traffic hazard as a reason for refusal was made in the decision by the Planning Authority for ABP-315065-22 (D22A/0638).
- 7.3. Accordingly, I do not propose to carry out a comparative analysis between the two cases as ABP-315065-22 (D22A/0638) is being assessed by a different Inspector who will present his/her report to the Board for their consideration and it would be inappropriate for me to reference case ABP-315065-22 (D22A/0638) in my report as conflicting advice may be given to the Board and lead to procedural and legal difficulties at a later date. I intend to make my assessment of ABP-318261-23 (D23A/0325) independently of ABP-318261-23 (D23A/0325), and when the Board is

in possession of the two Inspector's Reports it may choose to conflate the two separate cases if it so chooses.

7.4. Having regard to the above, the primary planning issues for assessment are as follows:

- Principle of development.
- Design and layout.
- Access arrangements.
- AA Screening.

7.5. Principle of Development

Having regard to the residential zoning attached to the land, its urban location with access to services and the governments Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024), the proposal for residential development at the appeal site is acceptable in principle.

7.6. Design and Layout

7.6.1. It is proposed to construct 6 no. houses in a horseshoe shape around the vehicular entrance area. Each house is of one and a half storey design in an architectural style that could be described as indeterminable. Two parking spaces are provided for each unit with front and rear private open space areas. There does not appear to be any public open space provided within the scheme. I refer the Board to an Architectural and Design Statement, Shadow Analysis and a Landscape Planning Report on file for the details of the proposed development.

7.6.2. I would concur with the Planning Authority assessment that the proposed scheme in terms of compliance with the quantitative criteria set down in Section 12 of the Development Plan does indeed meet all requirements relating to room sizes, parking, private open space, density of development, separation distances, landscaping, etc.

7.6.3. However, in qualitative terms I am of the opinion that the proposed scheme would not represent a development which would constitute a workable mini-neighbourhood due to the cluttered layout of the houses and the lack of a shared open space to encourage community interaction. The removal of house 4 could be viewed as

providing a solution to the perceived (though not in numerical terms) overdevelopment of the site should the Board be minded to grant permission in this instance.

7.6.4. The design of the houses, while to a certain extent a matter of personal taste is somewhat bland and indeterminate in terms of its architectural style. A development comprised of contemporary house designs would be more appropriate for this site. However, the houses will not intrude on the public realm given the location of the site and I would not therefore recommend to the Board that the scheme be refused on design and layout grounds.

7.7. Access Arrangements

7.7.1. The actual reasons for refusal relate to access and I reproduce them below:

- 1 *Having regard to the location and layout of the site access and the proposal, it is considered that the proposal would lead to endangerment of public safety due to the lack of adequate visibility for vehicles on R119 Ulverton Road, an existing bus route, for an exiting vehicle from the new vehicular entrance. Therefore the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise.*

- 2 *Having regard to the location and layout of the site access and the proposal, it is considered that the proposed development would lead to endangerment of pedestrians and vulnerable road users, due to the lack of adequate footpath facilities from the development to R119 Ulverton Road. Therefore the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise.*

7.7.2. Dealing with the second reason for refusal first, I am of the opinion that the reason for refusal overstates the danger posed by shared surfaces and the mixing of cars, bicycles and pedestrians sharing an access to less than ten houses and some storage sheds/garages. There would not be sufficient vehicular trip generation to pose a significant risk to other users of the access road and the narrow one-way traffic section halfway down the access road acts as a traffic calming device.

- 7.7.3. Therefore, I am of the opinion that the second reason for refusal cited by the Planning Authority is not sufficiently robust and should not be used by the Board as a reason for refusal should the Board be minded to do so.
- 7.7.4. Regarding the issue of sightlines which forms the basis for the first reason for refusal issued by the Planning Authority, I believe that the Planning Authority are correct in their assessment of this issue.
- 7.7.5. I refer the Board to the Trafficwise report on file dated 26th July 2023 submitted to the Planning Authority as part of the Further Information response. Section 2.5.1.2 of that report notes that looking right at the access point a Y distance (sightline) of 49m can be achieved in this 50km zone (where the road is a bus route) with an X measurement (setback) of 1.4m.
- 7.7.6. DMURS guidance notes that in some cases an optimum X distance of 2.4m cannot be achieved, especially in urban areas, and that a relaxation of this standard to an X distance of 2m may be permissible (DMURS 4.4.5 Visibility Splays). I can find no reference anywhere in DMURS to a further reduction by of 0.6m metres to an X measurement of 1.4m as proposed by the appellant and as referenced in the Trafficwise report.
- 7.7.7. With reference to the vertical plane, views to left and right at the access point are obstructed and an exiting vehicle would have to pull onto the carriageway to achieve the required visibility splay in its own right. The pulling out of a vehicle essentially in a blind view scenario represents a serious hazard primarily to vulnerable cyclists and pedestrians but also clearly to other vehicles on the road. An X measurement of 1.4m is clearly substandard and hazardous and regard must be had to the additional traffic that would be generated by the proposed residential scheme.
- 7.7.8. Having inspected the site I can confirm to the Board that views to left and right are obstructed. Those to the left by the garden wall of No. 54 and those to the right by the plant screen in the front garden of No. 56. The reference to a height of 1.1m being maintained by covenant are irrelevant given the bushes growing out over the footpath and obstructing views to the right.

7.7.9. Accordingly, I believe the Board should refuse the proposed development for the first reason cited by the Planning Authority in that safe sightlines are not achievable and exiting the access will require vehicles to encroach on the carriageway with consequent hazard implications for other road users especially vulnerable cyclists.

7.8. AA Screening

7.8.1. Having regard to the relatively minor development proposed within an existing housing estate and the distance from the nearest European site, 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

8.1.1. I recommend that planning permission be refused for the reasons and considerations set down below.

9.0 Reasons and Considerations

Having regard to the standards set down in DMURS and to the configuration of the existing access, to the proposed residential development and to the consequent increase in traffic using said access, it is considered that due to the inadequate sightlines available, that the access to serve the proposed development would by virtue of the risk to pedestrian, cycle and vehicular traffic, constitute a traffic hazard. Accordingly, the proposed development would 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.

Bernard Dee
Planning Inspector

8th March 2024