



An
Bord
Pleanála

Inspector's Report

ABP 318903-24

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| Development | Demolition of existing dormer bungalow and construction of 5-bedroom house |
| Location | Up in the Air, Old Thormanby Road, Howth, Co. Dublin |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | F23A/0013 |
| Applicant(s) | Bernice and Rick de Neve |
| Type of Application | Permission |
| Planning Authority Decision | Grant subject to condition |
| Type of Appeal | First Party v Conditions |
| Appellant(s) | Bernice and Rick de Neve |
| Observer(s) | None |
| Date of Site Inspection | 16 th May 2024 |
| Inspector | Brendan McGrath |

1.0 Site Location and Description

- 1.1. This is a narrow sloping, 0.32 ha. site in a low-density suburb which overlooks Dublin Bay. The site stretches between the Carrickbrack Road, the main road (R105) on the Howth peninsula and Thormanby Road, a quiet, winding, residential road which provides vehicular access to the site. The locality, known as the Baily, is characterised by a wide variety of houses set in a coastal, sylvan setting. The dwellings, in the main, are large houses on large sites. There is an existing dormer bungalow of conventional design on the site with seaward sloping gardens to the front and rear. The neighbouring properties are a 2-storey brick house in a traditional style ('St. Clare' on the south side) and a newly built 2-storey house of contemporary design ('Cova' on the north side). A large new house is under construction on the opposite side of the road.

2.0 Proposed Development

The proposal is a three-storey house of contemporary design. The design incorporates a cylindrical glass stairwell in the western elevation, and a 'pop-up' cinema/recreation room on the roof. Following a Further Information request, the proposed house was relocated 22 metres downslope, corresponding to the position of the existing bungalow and in line with the neighbouring house, 'St. Clare'. The proposal is now in front of 'Cova' on the north side.

3.0 Planning Authority Decision

3.1. Decision

Grant subject to 13 conditions which include:-

Condition 2

The proposed development shall be amended as follows;

- a) Omit the windows on the north western side of the angled windows on the northern elevation at upper floor level,

- b) Omit the third floor pop up
- c) Omit the cylindrical stairwell
- d) The privacy screen serving the terrace, c1.8 m in height to the front elevation shall be extended to wrap around the corner for c2m in length
- e) Prior to the commencement of the development, the development shall submit plans and elevations at scale 1:100 and contiguous elevations and site layout plan at scale 1:200 to demonstrate the required amendments

REASON: In the interest of visual amenity and the proper planning and sustainable development of the area

Condition 13

Prior to Commencement of the development, the developer shall pay the sum of €30,921.60 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the planning authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefitting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

REASON It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided, by or on behalf of the Local Authority

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report forms the basis of the planning authority decision to grant permission

3.2.2. Other Technical Reports

Parks and Green Infrastructure

No objection in principle

Transportation

No objection

Water Services

No objection

3.3. Prescribed Bodies

Uisce Éireann

No objection

3.4. Third Party Observations

Concern by occupiers of 'Cova' of overshadowing of sun terrace to side of house and proximity to site boundary

4.0 Planning History

F18/0371 (subject site) Conversion of garage to bedroom and new front boundary granted permission

F17A 0697, ABP 300894-18 ('Cova', adjacent site to north). Comprehensive redesign of existing dwelling granted permission by the Council and on appeal by An Bord Pleanála

5.0 Policy Context

5.1. Development Plan

The site is zoned RS with the objective to 'Provide for residential development and protect and improve residential amenity.' The site is part of the Howth Special Amenity Area

5.2. Natural Heritage Designations

None relevant

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development, 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 appeal is against conditions 2 and 13 of the grant of permission

Condition 2

The appeal is against four aspects of condition 2 requiring:-

- a) omission of windows on the N-W side of angled windows at upper floor level on northern elevation,
- b) omission of 'pop-up' on third floor,
- c) omission of cylindrical stairwell
- d) Extension of the privacy screen on the terrace.

Re: Omission of upper windows

There is now no direct overlooking of the rear private space of 'Cova' as a result of moving the house,

There is a +11m separation distance between proposed windows and windows in Cova

Re: Omission of pop-up

The external visual impact would be minor because the 'pop up' is to the rear of the roof and would hardly 'read', viewed from Thormanby road at the front of the site.

Re: Omission of cylindrical stairwell

Stairwell would be hardly visible and is in keeping with local maritime architecture

Re: Extension of privacy screen

Terrace overlooks side and front of adjacent house not its rear garden. Proposed area over car port is a shallow water reflector, not to be walked on.

Condition 13

The planning authority has not correctly applied the exemption which applies to building a house following demolition of an existing house

6.2. Planning Authority Response

In respect of Condition 2 the planning authority has responded that, when considered cumulatively, the cylindrical stairwell and third storey pop-up would be 'out of character' and unduly dominant upon the skyline and sensitive landscape' and also considered likely to give rise to a potentially adverse impact on residential amenity. The PA therefore requests Condition to be retained as stated.

In respect of Condition 13 the planning authority states that the levy has been applied correctly, on the basis of a proposed development floor area of 467m² not 280m² as asserted by the applicants/appellants

6.3. Observations

There are no observations

6.4. Further Responses

The appellants have responded to the Planning Authority response as follows:-

In respect of Condition 2 they have elaborated their argument that the general context of location within a neighbourhood of houses on large sites and buildings in a wide range of styles that there is considerable scope for designs in a range of styles which allow for individual treatments and designs which will not have an adverse impact on the local landscape

In respect of Condition 13, the appellants have set out what they consider to be the appropriate levy, having regard to the Fingal Development Contribution Scheme and the floor area of the proposal as calculated by the planning authority

The appellants' calculation, having regard to the allowance for demolition of an existing house ($467 - 227\text{m}^2 = 205\text{m}^2$). $205\text{m}^2 @ 106.46$ is € 21,824.30 and not €30,921.60. In their original appeal submission the appellants had asserted that the levy due was only €5,642.38 based on a plainly inaccurate statement about the size

of the house proposed. In their further response they have stated the requisite levy is €21,824.30 and not €5,642.38.

7.0 Assessment

- 7.1. This is a first party appeal against conditions 2 and 13 of the Planning Authority's decision to grant permission. I am satisfied, having regard to the nature of the conditions that have been appealed that the determination by the Board of the relevant application as if it had been made to it in the first instance, would not be warranted and I recommend that subsection (1) of section 139 of the Planning and Development Act 2000, as amended, be invoked. Accordingly I intend to limit consideration to a) the matters raised in relation to the terms of condition 2 and to the correct application of the Fingal Development Contribution Scheme 2021-2025.

Condition 2

Having examined all the application and appeal documentation on file, and having regard to relevant guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal. Appropriate Assessment also needs to be considered. The fact that the proposed house has been repositioned to where the existing dwelling is sited and there are upstairs windows in the dwelling (and the upstairs was accessible during the site inspection) has facilitated assessment of issues relating to overlooking, overshadowing and overbearing nature. The main issues, therefore, are:-

- Overlooking, overshadowing and loss of privacy,
- Visual impact of proposed 'pop-up'
- Visual impact of cylindrical, glass stairwell

Overlooking and loss of privacy

I consider that the repositioning of the proposed house so that it is in line with St Clare and in front of and below Cova satisfactorily addresses the overlooking, overshadowing and privacy issues which are of concern to the council planner.

Visual impact of proposed 'pop up'

As a result of repositioning of the 'pop up' cinema room to the rear of the roof, the lower position of the house on the site and the existing tree cover to the rear of the site, established character of the area comprising a diversity of house styles, including contemporary designs, on large sites, I do not consider that the 'pop up' would have a significant adverse visual impact.

Visual impact of cylindrical, glass stairwell

There is a similarity in elevational treatment between the front elevations of the existing, neighbouring 'Cova' and the proposed house. In my opinion the proposed stairwell is a welcome distinguishing feature of the proposal which would not be overly dominant. Together with the 'pop up' I consider that this is an attractive design feature which optimises site location without compromising the beauty of the locality. Given the diversity of house styles, including contemporary designs, I do not consider the stairwell would be a discordant feature in the landscape.

7.2. Condition 13

The 2021 Fingal Development Contribution Scheme applies and annually adjusted index-linked levy to residential development. The Scheme has an exemption for residential development relating to demolition and rebuilding as follows:

(q) Demolition and Rebuild: where permission is granted to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be calculated as follows:

Where a contribution has previously been paid- reduction in respect of demolition work will be allowed, excluding structures exempt from contribution. Demolition must be necessary to facilitate the development.

Both the local authority and the applicant/developer accept that an exemption is applicable in this instance. However, they disagree about the extent of the works proposed and therefore the size of the area for which the exemption applies.

Neither party has provided a detailed breakdown of their floor area calculations nor detail of the indexation process. By reference to the floor plans submitted on 29th November 2023 which, it should be noted, are marked as for information only and not to be used for calculations, I surmise that the works' area is approximately 467m², as calculated by the local planning authority, and not 432m² as calculated by the applicant/appellant.

Neither party has set out how the annual indexation, which is provided for in the Contribution Scheme, has been applied. The planning authority has applied a pro-rata rate of € 128.84 per m² and the applicant/appellant a pro-rata rate of € 106.46 per m².

This results in a financial contribution condition calculated by the planning authority of $(467-227) \times 128.84$, which is €30,921.60, while the applicant/appellant is asserting that the levy should be $(432- 227) \times 106.46$, which is €21,824.30.

Contributions are to be paid prior to commencement of development and the contributions to be payable according to an index adjusted rate pertaining to the year in which implementation of the planning permission is commenced

In this instance it is important that the details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer and that, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

8.0 Recommendation

I recommend that condition number 2 be omitted for the reasons and considerations set out below

I recommend application of the standard ABP condition (amount unspecified) in respect of development contributions under section 48 of the Planning and Development Act

9.0 Reasons and Considerations

Regarding Condition 2

Having regard to the repositioning of the proposed house following a further information request, the established settlement character of the locality which includes a variety of houses on large plots, including houses of contemporary design, and also taking account of existing tree cover, it is considered that condition number 2, requiring design amendments is not warranted and should be omitted

Regarding Financial Contribution

The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of

the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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.

Brendan McGrath
Planning Inspector

11th June 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

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|---|--|----------------------|---|
| An Bord Pleanála Case Reference | 318903-24 | | |
| Proposed Development Summary | Replacement house | | |
| Development Address | Up in the Air, Old Thormanby Road, Howth | | |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings) | | Yes | <input checked="" type="checkbox"/> |
| | | No | No further action required |
| 2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class? | | | |
| Yes | | Class..... | EIA Mandatory EIAR required |
| No | <input checked="" type="checkbox"/> | | Proceed to Q.3 |
| 3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]? | | | |
| | | Threshold | Comment (if relevant) |
| No | | N/A | No EIAR or Preliminary Examination required |
| Yes | | Class/Threshold..... | Proceed to Q.4 |

4. Has Schedule 7A information been submitted?

| | | |
|------------|-------------------------------------|---|
| No | <input checked="" type="checkbox"/> | Preliminary Examination required |
| Yes | | Screening Determination required |

Inspector: _____**Date:** 11th June 2024