



An  
Bord  
Pleanála

## Inspector's Report ABP319550-24

<b>Development</b>	Extension of dropped kerb for vehicular access removal of a grass verge.
<b>Location</b>	67 Rusheen Avenue, Dublin 15, D15N4A3.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	FW24A/0043E.
<b>Applicant(s)</b>	Joanna Collins.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Joanna Collins.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	02/07/2024.
<b>Inspector</b>	Anthony Abbott King.

## **1.0 Site Location and Description**

- 1.1. No. 67 Rusheeney Avenue is located within an extensive network of residential streets and open spaces comprising semi-detached two-storey and single-storey houses known as Rusheeney Village.
- 1.2. No. 67 Rusheeney Avenue is a two-storey two-bay semi-detached house with a front and rear garden in a streetscape of similar houses facing north-east. The houses on this section of Rusheeney Avenue enjoy prospect over a large communal green space. The front garden is hard surfaced in cement.
- 1.3. There is no existing physical front boundary delineating the front of the property from the public domain. A dished footpath interfaces with the public carriageway for approximately half of the frontage onto Rusheeney Avenue; the residual frontage interfaces with the public footpath and a grass verge located between the indicative front boundary and the main carriageway.
- 1.4. There is a low boundary wall to the north-west separating No. 67 Rusheeney Avenue from the adjoining semi-detached house at no. 68 Rusheeney Avenue.
- 1.5. The tall rear garden wall of the adjoining house at no. 136 Rusheeney View defines the boundary to the south-east. This wall extends to the footpath edge on Rusheeney Avenue.
- 1.6. Site area is given as 0.020 hectares.

## **2.0 Proposed Development**

- 2.1. Extension of dropped kerb for vehicular access and the removal of a grass verge.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission for the following reason:

*(1) The proposed development if permitted would give rise to conflict between pedestrian movements along the public pathway and vehicles entering and*

*existing the site and would therefore endanger public safety by reason of traffic hazard or obstruction of road users otherwise.*

*(2) The proposed development would have a negative impact on existing services and a public lighting pole in the grass verge and would set an undesirable precedent for similar type development within the area.*

*(3) The applicant has not demonstrated to the satisfaction of the Planning Authority that she has sufficient legal interest to undertake the works proposed.*

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

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

The decision of the CEO of Fingal county Council reflects the recommendation of the planning case officer.

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

Transportation Planning Section object to the proposal and recommend refusal of planning permission.

Parks and Green Infrastructure Division has no objection to the above development. The Report notes that there are no street trees located in the grass margin due to existing services including a lamp standard.

### **4.0 Planning History**

There is no recent relevant planning history.

### **5.0 Policy and Context**

#### **5.1. Development Plan**

The Fingal Development Plan 2023-2029 policy framework is the relevant local planning policy document.

Zoning

The relevant land-use zoning objective is 'RS'(Sheet 13 / Blanchardstown South):  
*Provide for residential development and protect and improve residential amenity.*

- Chapter 13 (Land use Zoning) states the vision for the objective is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenities.
- Chapter 14 (Development Management Standards) is relevant.
- Section 14.9.3 (Roads and Footpaths) states:

*The design of streets in urban areas is guided by the Design Manual for Urban Roads and Streets (DMURS) and the DMURS Interim Advice Note – Covid 19 Pandemic Response 2020. This Plan will support the implementation of DMURS principles for all new transportation and public realm schemes within the County.*

- Section 14.17.6 (Road Safety) Policy Objective DMSO118 (Road Safety Measures) states:

*Promote road safety measures in conjunction with the relevant stakeholders and avoid the creation of traffic hazards.*

## **5.2. EIA Screening**

- 5.3. The proposed development is not within a class where EIA would apply.

## **6.0 The Appeal**

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

The grounds of appeal, prepared by Sean Connolly, Planning Consultant, House & Extension Plans, on behalf of the applicant, is summarised below:

- In response to the first reason for refusal, the proposed widening of the dished kerb poses no heightened risk to road users or pedestrians and instead ensures smoother and safer vehicular ingress and egress from the property, improving traffic flow and pedestrian safety. The existing driveway significantly

exceeds the dished kerb and introduces hazards due to vehicles manoeuvring at awkward angles as they enter and exit the property. Aligning the driveway with the kerb would facilitate smoother vehicular movements enabling straight line movements enhancing sight lines and visibility.

- It is illogical to maintain the current disproportionate relationship between driveway width and kerb alignment from a safety standpoint. Photographic evidence is provided of nearby properties (including 44 Rusheeney Crescent; 33 Rusheeney Way), which it is claimed illustrate aligned driveway openings and dished kerbs support safer vehicular access.
- In response to the second reason for refusal, the positioning of the lighting pole between nos. 67 and 68 Rusheeney Avenue will remain unobstructed, allowing for maintenance access and posing no hazard to vehicles manoeuvring into and out of the property. The planning authority has recently granted similar kerb modifications adjacent to services, including lighting poles.
- A notable example is retention permission granted under planning reference F22A/0592 in January 2023 for works at 30 The Grove, Skerries Rock, Skerries, County Dublin (photograph attached of driveway & granted retention site layout plan) where a lighting pole placement to the property boundary mirrors the subject situation. The appellant claims that the vehicular access and kerb dishing implemented have not resulted in any undue inconvenience to services. The precedent set by previous approvals indicates that similar developments can be successfully implemented without compromising service integrity;
- In response to the third reason for refusal, concerning the demonstration of sufficient legal interest. The procedural history contextualizes the discrepancies. A prior submission under planning reference FW24A/0024E was invalidated due to discrepancies in the ordnance map and site layout plan. Subsequent to engagement with Fingal County Council the planning application was resubmitted with a revised site layout and ordnance map, including the correct site boundaries and the area designated for the proposed kerb (denoted in magenta on an attached site layout plan).

- Fingal County Council have questioned the validity of the updated boundary lines, which the Council requested. Therefore, these modifications should not serve as grounds of refusal. It is claimed the transition to a new online system in late 2023 / early 2024, may have introduced confusion or discrepancies in the submission process. Indeed, the requirement for hard copies of plans, as noted in the reasons for invalidation, underscores the procedural adjustments necessitated by this transition.
- The revisions to the site layout plans and ordnance maps were undertaken at the behest of the planning authority in response to clarification. Furthermore, the accurate identification of the subject site in the invalidated planning application supports the appellant's legal interest while some clarification may be warranted regarding the subsequent concerns of the planning authority.
- The proposed kerb modifications represent a common upgrade observed throughout the area, indicating that signalling out the appellant for refusal would be unjustified.

## **6.2. Applicant Response**

N/A first party appeal

## **6.3. Planning Authority Response**

The planning authority has no further comment and respectfully requests that the Board uphold the decision made.

## **7.0 Assessment**

- 7.1. The following assessment covers the points made in the appeal submission, the reasons for refusal and is a consideration of the proposed development. It is noted there are no new substantive matters for consideration.
- 7.2. The appellant applied to the planning authority for the extension of the existing dropped kerb to the front drive of no. 67 Rusheeney Avenue providing for the widening of the vehicular access to the hard-surfaced front garden for the full width of the street frontage. The extension of the drop kerb would require the removal of

the existing grass verge and the dishing of the footpath between the indicative front boundary and the main carriageway.

- 7.3. The planning authority refused the development for three reasons. The appellant's grounds of appeal address the 3 reasons for refusal as follows: The appellant claims that the proposal would improve and enhance safety for both road users and pedestrians by reason of regularising an existing situation where the front garden of no. 67 Rusheeney Avenue provides parking for two cars.
- 7.4. The appellant claims that the proposal would be consistent with previous planning authority decision making in the matter of vehicular access proximate to public services, in particular proximity to public lighting polls. Furthermore in the matter of sufficient legal interest the appellant claims that the property boundary has been clarified with the planning authority previously. I assess the reasons for refusal and the appellant grounds of appeal below.

#### 1<sup>st</sup> Reason for Refusal

- 7.5. The first reason for refusal relates to endangerment of public safety by reason of traffic hazard, as the development if permitted would *inter alia* give rise to conflict between pedestrian movements along the public pathway and vehicles entering and existing no. 67 Rusheeney Avenue.
- 7.6. The appellant claims that contrary to the assertion of the planning authority the proposed modifications would mitigate risks associated with vehicular movement. The appellant claims that the existing driveway exceeds the dished kerb significantly resulting in awkward and potentially hazardous angles for vehicles entering and exiting the property. It is claimed in the interests of promoting safer ingress and egress, the alignment of the curb with driveway would improve sightlines and manoeuvrability.
- 7.7. The Fingal County Development Plan 2023-2029, Chapter 14 (Development Management Standards), Section 14.9.3 (Roads and Footpaths) states that the design of streets in urban areas is guided by the Design Manual for Urban Roads and Streets (DMURS). Section 14.17.6 (Road Safety), Policy Objective DMSO118 (Road Safety Measures) promotes road safety measures to avoid the creation of traffic hazards.

- 7.8. The Transport Planning Section of the planning authority recommend that the proposed dropped kerb for vehicular access and the removal of the grass verge be refused permission. The Transportation Planning Section report states that the planning authority seek to limit the distances of crossovers of driveways to a maximum of 4.0m in order to reduce and limit conflict between pedestrians and vehicles. The proposed vehicular access would be significantly greater (7.5m) than the 4m maximum restriction.
- 7.9. I note that the streetscape on this section of Rusheeney Avenue is located perpendicular to the streetscape on Rusheeney View. The juxtaposition of building lines results in a high boundary party wall between no.136 Rusheeney View and no.67 Rusheeney Avenue. The high boundary between no. 136 Rusheeney View and no. 67 Rusheeney Avenue extends to the footpath on Rusheeney Avenue restricting the sightline to the east when exiting the driveway. However, I do not consider this a justification for extending the access for the full width of the frontage (7.5m).
- 7.10. The Transport Planning Section also states that the maximum car parking allowance for a 3 plus bedroom dwelling is 2 car parking spaces. The Report confirms that 2 spaces can be accommodated using the existing vehicular access crossover of the public footpath. I also note the negative visual impact of the existing opening and hard-surfaced car parking area (approximately 56 sqm.), which provides no enclosure to the front garden of the subject property poorly defining the private and public domain. The negative visual impact would be exacerbated by the removal of the grass verge.
- 7.11. I consider that there is no planning justification for the extension of the vehicular access for the full width of the street frontage onto Rusheeney Avenue.

#### 2<sup>nd</sup> Reason for Refusal

- 7.12. The second reason for refusal relates to the negative impact of the development on existing services and the location of a public lighting pole in the grass verge proximate to the proposed widening of the vehicular access. The planning authority state the development would set an undesirable precedent for similar type development within the area.



- 7.13. The appellant claims the positioning of the lighting pole between nos. 67 and 68 Rusheeney Avenue will remain unobstructed, allowing for maintenance access and posing no hazard to vehicles manoeuvring into and out of the property. The appellant claims that the planning authority has recently granted similar kerb modifications adjacent to services, including public lighting poles. The appellant cites a recent grant of planning permission (January, 2023) at no. 30 The Grove, Skerries Rock, Skerries, County Dublin (F22A/0592 ) in support of the application where a public lighting pole is similarly located in a grass verge proximate to a vehicular entrance opening.
- 7.14. I note the location of the subject public lighting pole, which would appear to be aligned with the property boundary between nos. 67 and 68 Rusheeney Avenue. I have reviewed the cited application register reference F22A/0592. The width of the permitted vehicular entrance granted under register reference F22A/0592 is 5.75m. I acknowledge that the permitted width is greater than 4m. However, I do not consider that the cited application at no. 30 The Grove, Skerries Rock, Skerries is applicable to a vehicular entrance that would have a width of approximately 7.5 m.
- 7.15. The Transport Planning Section report states there are services in the grass verge as well as a public lighting pole that would no longer have protection from vehicles. I acknowledge the Transport Planning Section recommendation in the matter of the lighting pole and services. I consider that their caution is reasonable.

### 3<sup>rd</sup> Reason for Refusal

- 7.16. The third reason for refusal relates to discrepancies in the submitted property boundaries. The planning case officer notes under procedural issues that while the applicant has included the kerb area within the red line boundary of the site, the applicant has not demonstrated sufficient legal interest in this area or submitted a letter of consent to undertake the proposed works.
- 7.17. I consider that the appellant has demonstrated bona fides in the matter of the submission of valid site boundaries. The clarification provided by the appellant is based on evidence provided by the planning authority as part of an invalidation process. A revised site layout and ordnance map, including the appellant's claimed correct site boundary and an area designated in magenta on the attached site layout plan denote the location of the kerb works.

- 7.18. I consider that further clarification can be requested to achieve further transparency in terms of legal interest. However, I do not consider that the matter of the property boundary is a reason for refusal given the bona fides of the applicant / appellant.

#### Conclusion

- 7.19. In conclusion, the proposed development requiring the removal of the existing grass verge and the dishing of the footpath between the front boundary and the carriageway, in order to widen the vehicular access to facilitate vehicular movements from the public carriageway to the front curtilage of no. 67 Rusheeney Avenue for the full width of the street frontage, would give rise to a conflict between pedestrian movements along the public pathway and vehicles entering and existing no. 67 Rusheeney Avenue. Furthermore, the development would have a negative impact on existing services located in the grass verge including a public lighting pole, which would not be protected from vehicular movements.
- 7.20. I conclude that the proposed development would have an adverse impact on pedestrian safety, would have a negative visual impact on the streetscape, and would be inconsistent with the proper planning and sustainable development of the area.

#### **7.21. Appropriate Assessment Screening**

The proposed development comprises boundary modifications within an established urban area.

Having regard to the nature and scale of the proposed development, it is possible to screen out the requirement for the submission of an NIS.

### **8.0 Recommendation**

- 8.1. I recommend refusal of planning permission for the reasons and considerations outlined below.

### **9.0 Reasons and Considerations**

Having regard to the grounds of appeal, the reasons for refusal, the residential zoning objective and the policy framework provided by the Fingal County Development Plan 2023-2029, it is considered that the proposed development

requiring the removal of the existing grass verge and the dishing of the footpath between the front boundary and the carriageway in order to widen the vehicular access from the public carriageway to the front curtilage of no. 67 Rusheeney Avenue for the full width of the street frontage, would give rise to a conflict between pedestrian movements along the public pathway and vehicles entering and existing no. 67 Rusheeney Avenue, and would have an adverse visual impact. Furthermore, the development would have a negative impact on existing services located in the grass verge including a public lighting pole, which would not be protected from vehicular movements. Thus the proposed development would give rise to undesirable precedent for similar poorly defined front boundary treatment between the private and public domain and would be inconsistent with the proper planning and sustainable development of the area.

## 10.0 Refusal

1.	The proposed development if permitted would give rise to conflict between pedestrian movements along the public pathway and vehicles entering and existing the site and would therefore endanger public safety by reason of traffic hazard or obstruction of road users otherwise.
2.	The proposed development would have a negative impact on existing services and a public lighting pole in the grass verge and would set an undesirable precedent for similar type development within 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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Anthony Abbott King  
Planning Inspector

05 July 2024