



An  
Bord  
Pleanála

## Inspector's Report ABP319761-24

### Development

An attic conversion to the main roof for storage purposes, alterations of hip profile to gable at side, provision of a dormer window to rear roof slope and internal modification works at first floor level. Retention of a 2.1m high side boundary wall adjacent to the public footpath.

### Location

1 Holywell Row, Swords, County Dublin, K67DD29.

### Planning Authority

Fingal County Council.

### Planning Authority Reg. Ref.

F24A/0177.

### Applicant(s)

Declan & Aine Keane.

### Type of Application

Permission & Retention.

### Planning Authority Decision

Split Decision.

### Type of Appeal

First Party

### Appellant(s)

Declan & Aine Keane.

### Observer(s)

None.

**Date of Site Inspection**

01/07/2024.

**Inspector**

Anthony Abbott King.

## **1.0 Site Location and Description**

- 1.1. No.1 Holywell Row is located on the west side of the Holywell Row. Holywell comprises a network of suburban cul-de-sacs and streets on the south side of the R125 (distributor road), which provides access from the M1 into Swords to the south.
- 1.2. No.1 Holywell Row is an end of terrace two-storey house with a single storey extension accommodated on a relatively large corner site with a walled rear and side garden. No.1 Holywell Row is configured to front onto Holywell Dale.
- 1.3. Holywell Dale is a green spine with access roads and footpaths that runs in an east-west axis. The network of suburban cul-de-sacs in the vicinity run perpendicular to Holywell Dale, including Holywell Row.
- 1.4. The end houses in the perpendicular terraces are configured to front Holywell Dale on either side of the Dale. On the north side of Holywell Dale terraced houses run parallel to the Dale (including 1-8 Holywell Dale adjacent to the subject house) between the bookend frontage houses (including nos. 1 & 2 Holywell Row and no. 1 Holywell Rise) at the ends of the perpendicular terraces.
- 1.5. The driveway to no. 8 Holywell Dale is located immediately adjacent to the west.
- 1.6. The site area is given as 0.0246 hectares.

## **2.0 Proposed Development**

- 2.1. An attic conversion to the main roof for storage purposes, alterations of hip profile to gable at side, provision of a dormer window to rear roof slope and internal modification works at first floor level and;
- 2.2. Retention of a 2.1m high side boundary wall adjacent to the public footpath.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Split Decision

Schedule 1

Grant permission for the substantive development comprising attic conversion for storage purposes, remodelling of the existing hip profile to gable at side, dormer window to rear roof slope and internal modifications at first floor level subject to 8 conditions.

### Schedule 2

Refuse retention permission for the 2.1m side boundary wall adjacent to the public footpath.

1. *The proposed development for retention permission of a 2.1m high side boundary wall would, if permitted, endanger public safety by reason of traffic hazard as the required sightlines cannot be achieved at the adjacent vehicular entrance to the neighbouring property directly to the west. It is therefore considered that the proposed retention of development, if permitted, would be contrary to the requirements of Objective DMSO118 of the Fingal Development Plan 2023-2029 which aims to avoid the creation of traffic hazards and would be contrary to the proper planning and sustainable development of the area.*

## **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**

The Transportation Planning Section raises serious concerns in the matter of the retention of the 2.1m high side boundary wall adjacent to the footpath.

Parks & Green Infrastructure no objection.

## **4.0 Planning History**

There is no recent relevant planning history.

## 5.0 Policy and Context

### 5.1. Development Plan

The local policy framework is provided by the Fingal Development Plan 2023-2029. The relevant policies and objectives are set-out below:

- Zoning

The relevant land-use zoning objective is “RS” (Sheet 8 – Swords): *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.

The proposed development is permitted in principle.

Chapter 14 (Development Management), Section 14.17.6 (Road Safety) is relevant and states:

*In the design and/or improvement of roads and in the assessment of planning applications for new development, the safety of all road users, including pedestrians, cyclists and motorists will be a primary consideration.*

Policy Objective DMSO118 (Road Safety Measure) is relevant and 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 are summarised below:

- The reason for refusal by the planning authority is “Objective DMSO118” of the Fingal Development Plan 2023-2029, which aims to avoid the creation of traffic hazards on new builds.
- The boundary wall had to be demolished due to health and safety concerns of a potential collapse onto the public footpath (photographs of the damaged previous wall are attached with the appeal statement) . The wall was rebuilt in June 2021. Therefore, the wall was constructed before the introduction of “Objective DMSO118” of the Fingal Development Plan 2023-2029. The subject wall is not a new build structure rather it is a rebuild. The existing planning policy was not in place in 2021. It is claimed that Fingal County Council should not have refused the build by reason retrospectively based.
- The refusal is specifically and only in conjunction with the property to the west of 1 Holywell Row (8 Holywell Dale). The property owners in December 2023 did not object to the boundary wall being rebuilt in the current location following a request from the planning authority.
- The letter written to the planning authority by the resident of no. 8 Holywell Dale (Darragh Tighe) stated the replacement wall improved the security of his driveway and their vehicles. The subject letter, undated addressed to the Planning Enforcement Section of the planning authority (ENF No 23/232A), is attached to the appeal statement (Ref: DK1).
- A second letter, dated 10<sup>th</sup> May 2024, from the resident of no. 8 Holywell Dale (Darragh Tighe) is also attached confirming the content of the first letter (Ref: DK3). The second letter documents that the resident of no. 8 Holywell Dale has no sightline issues when embarking upon the subject throughfare. It is claimed that the suggest to move the wall (pillar) back 0.5m will have no benefit in terms of line of sight. The author notes that the side wall at no. 1

Holywell Row is no different to the wall at no. 1 Holywell Dale. Furthermore, the author states that in all instances cars that park outside and to the left of his property cause the only issue when exiting.

- The wall was moved 0.5m south in keeping with precedent with all other properties in the Holywell estate. It is noted all walls are 2.1m in height from the original creation of the estate. The reason to relocate wall was to realign with the existing boundary line. The appeal statement has attached a Land Registry boundary map (Ref: DK2).
- The planning authority have noted ambiguity regarding the submitted red line boundary of the site. The planning authority states that the applicant has failed to show the necessary consent to include all lands within the application. However, the appellant disagrees with this point. The landowner to the west (Darragh Tighe) has no objection to the wall in its present location, reiterated in his letter of the 10<sup>th</sup> May 2024.
- The previous pillar at the end of the wall to the property to the west already had a potential line of sight issue for no. 8 Holywell Dale. This situation is replaced to all other houses in the estate. Photographs attached with the appeal statement illustrating the location of existing side wall projections to the end pillar, including 1 Holywell Dale (Ref: DK4). The moving of the pillar back will have no benefit to sightlines.
- The grass verge between the previous side wall and the footpath was not taken in charge, as confirmed by the planning authority, and was maintained by the owner at no. 1 Holywell Row since 2009. If there is an issue in regard to the red line boundary there is now a possibility of possessory title.
- The planning authority claim that the movement of the boundary south by 0.5m has created a traffic hazard for no. 8 Holywell Dale. The precedent for the subject rebuilt wall and pillar to the footpath is established by the existing boundary treatment to no. 1 Holywell Dale / 8 Holywell Dale and 1-7 Holywell Heights. The same boundary walls out to the footpath are in place in multiple locations within the estate.
- The claim by the planning authority that there was no pre-planning consultation is incorrect. The appellant contacted the planning authority

notifying and enquiring the cost of deconstruction and rebuilding of the wall given the danger of its collapse into the public footpath. The liability resulting from a wall collapse was confirmed by the planning authority as vested in the owner. Thus the wall was rebuilt at a cost of €10,000.

- The appellant claims that he was misinformed by the planning authority in the matter of the requirement to obtain planning permission. He enquired into the planning implications of rebuilding the wall and was informed that it would not require planning permission to build a wall on his boundary subject to clarification on the planning authority website. The appellant regrets he did not ask for a letter or email of clarification. A narrative of the history of communication with the planning authority is documented in the appeal statement.

## **6.2. Applicant Response**

N/A first party appeal

## **6.3. Planning Authority Response**

The planning authority reaffirms the refusal reason and requests An Bord Pleanála to uphold the decision of the planning authority.

## **6.4. Observations**

None

## **7.0 Assessment**

- 7.1. The appeal of a split decision of the planning authority solely relates to the refusal of permission for that part of the development to be retained. Having reviewed the application, the appeal and conducted a site visit, I consider that the only planning matter at issue in this case is the reason for refusal for the retention of a 2.1m high side boundary wall and that no other planning matters need to be considered by the Board.



- 7.2. The Transportation Planning Section of the planning authority report that there are serious concerns in relation to the retention of the 2.1m high side boundary wall adjacent to the footpath. The Transportation Planning Section note that a review of the OSI historical aerial images, appears to show that the subject wall was rebuilt circ. 2019 and the location of the wall was moved 0.5m south of its previous location. As a result a grass verge to the south between the footpath and the original boundary has been incorporated within the applicant's new boundary.
- 7.3. Furthermore, the planning authority states that the applicant has failed to show the necessary consent to include all lands within the application.
- 7.4. The appellant claims that the wall was in poor condition and had to be rebuilt. It was moved 0.5m south in keeping with precedent on the Holywell estate, as all other properties in the Holywell estate have walls that follow the property boundary line. It is noted all walls are 2.1m in height from the original creation of the estate.
- 7.5. In the matter of the red line boundary denoting the site, the appellant submits a Land Registry boundary map (Ref: DK2). The appellant notes that his neighbour at no. 8 Holywell Dale has no objection to the location of the wall, as evidenced in his letter of the 10<sup>th</sup> May 2024 (attached) and previously (attached letter to the Enforcement Section of the planning authority under reference ENF No 23/232A).
- 7.6. I consider that the following are the relevant matters in the assessment of the appeal and the reason for refusal:
- Sightlines and the position of the replacement wall;
  - The accuracy of the site boundary.

Sightlines and the position of the replacement wall

- 7.7. The appellant claims that he consulted the planning authority before the demolition and construction of the replacement wall in order to clarify a number of matters including the liability arising in the event of the collapse of the original wall and the role of the planning authority in aiding reconstruction. Furthermore, the appellant claims that he sought clarification on the requirement to obtain planning permission for the reconstruction of the wall. The appellant claims it was confirmed by the planning authority that planning for a boundary wall was not required subject to

clarification on the planning authority website. I acknowledge the bona fides of the appellant and note these matters.

- 7.8. The resident of no. 8 Holywell Dale, Mr. Darragh Tighe, submitted a letter to an Enforcement Department request, under reference ENF No 23/232A, in response to a planning authority enquiry. The response letter, undated, addressed to the Planning Enforcement Section of the planning authority (ENF No 23/232A), is attached to the appeal statement (Ref: DK1). The letter states that the resident of no. 8 Holywell Dale, the house to the west of the applicant site and the subject of the reason for refusal, did not object to the boundary wall being rebuilt in the current location at the time of reconstruction and that the replacement wall *inter alia* improved the security of his driveway.
- 7.9. The resident of no. 8 Holywell Dale, Mr. Darragh Tighe, subsequently wrote a second letter of clarification dated 10<sup>th</sup> May 2024 (Ref: DK3). The second letter documents that the resident of no. 8 Holywell Dale has no sightline issues in regard to the position of the wall (pillar). The author questions the requirement of the planning authority to move the wall back 0.5m from the present position of the replacement wall noting that no.1 Holywell Dale (at the end of the terrace to the west of no. 8 Holywell Dale) has a similar driveway and wall configuration.
- 7.10. The author of the letter claims the re-positioning of the wall (pillar) 0.5m will have no benefit in terms of the line of sight. Furthermore, the author states that in all instances cars that park outside and to the left of his property cause the only issue when exiting.
- 7.11. The appellant questions the grounds for the reason for refusal by the planning authority. The appellant claims that "Objective DMSO118" of the Fingal County Development Plan 2023-2029 relates to the creation of traffic hazards on new build developments rather than replacement structures. I have examined the policy context. I would agree with the appellant that the provision relates to the assessment of planning applications for new development. I note that the development to be retained is within a mature residential area where the road layout, building and boundary configuration is established.
- 7.12. Furthermore, I note the evidence provided by the resident of no. 8 Holywell Dale that he does not have an issue with sightlines at present. He states that a set-back of

0.5m would not make a material difference in his line of vision in exiting his driveway. I have conducted a site visit. I would concur with Mr. Darragh Tighe's assessment to question the potential benefit of a 0.5m set back.

- 7.13. I consider that the reason for refusal cannot be supported by the grounds of refusal stated by the planning authority.

The accuracy of the site boundary

- 7.14. The appellant claims to have submitted with the appeal a Land Registry boundary map (Ref: DK2). There is no supporting evidence that the submission is the definitive Land Registry map. However, the indicative property boundary line on the submitted map illustrates that the subject wall is aligned with the property boundary.

- 7.15. I have conducted a site visit. I note that the end houses in the terraces (including no. 1 Holywell Row) that run perpendicular to Holywell Dale are configured to front Holywell Dale (fronting north and south along the east-west axis of Holywell Dale) and that they exhibit flanking side walls tight to the footpath directly aligning with the street. I am satisfied that the appellant has aligned the wall with the property boundary in good faith.

The proposed development granted permission by the planning authority

- 7.16. The planning authority granted planning permission for the substantive development comprising attic conversion for storage purposes, remodelling of the existing hip profile to gable at side, dormer window to rear roof slope and internal modifications at first floor level subject to condition. I would concur with the assessment of the planning case officer in the matter of the upgrade of internal accommodation on site and associated elevation modifications.

Conclusion

- 7.17. In conclusion, the proposed development and the development to be retained would generally be consistent with the policy framework provided by the Fingal County Development Plan 2023-2029, including the "RS" residential zoning objective, would not have an adverse impact on the residential amenities of existing neighbouring properties and, as such, would be consistent with the proper planning and sustainable development of the area.

### 7.18. **Appropriate Assessment Screening**

The proposed development comprises the refurbishment of an existing dwelling 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 a grant of planning permission for the proposed development and the development to be retained subject to condition for the reasons and considerations set out below.

## 9.0 **Reasons and Considerations**

Having regard to the grounds of appeal, the reason for refusal and the “RS” residential zoning objective of the Fingal County Development Plan 2023-2029, which seeks to provide for residential development and protect and improve residential amenity, it is considered that the proposed development and the development to be retained would generally be consistent with the policy framework provided by the Fingal County Development Plan 2023-2029, would not have an adverse impact on the residential amenities of existing neighbouring properties and, as such, would be consistent with the proper planning and sustainable development of the area.

## 10.0 **Conditions**

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| 1. | The development proposed and to be retained shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. |
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|    | <p><b>Reason:</b> In the interest of clarity.</p>   |
| 2. | <p>The developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>  |
| 3. | <p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p><b>Reason:</b> In the interest of public health.</p>  |
| 4. | <p>Details of the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>  |
| 5. | <p>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.</p> <p><b>Reason:</b> 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.</p> |

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