



An  
Bord  
Pleanála

## Inspector's Report

**ABP- 322043-25**

<b>Development</b>	Retention raised roof level of dwelling as constructed, storage and plant rooms, balcony area and external steps and ramp and all associated site works		
<b>Location</b>	Lands to the rear of 32B, Howth Road, Sutton, Co. Dublin.		
<b>Planning Authority Ref.</b>	F24A/0419E.		
<b>Applicant(s)</b>	Shirley and Ian Donnelly.		
<b>Type of application</b>	Retention Permission and Permission	<b>PA Decision</b>	Split Decision- Grant both.
<b>Type of Appeal</b>	Third	<b>Appellant</b>	Dr. Sam Naser Darragh Keogh
<b>Observer(s)</b>	None on file		
<b>Date of Site Inspection</b>	13.05.2025	<b>Inspector</b>	Des Johnson

### 1.Site Location/ and Description

1.1 The site is located to the north side of Howth Road, approximately 0.5km east of the Sutton Crossroads. The site formerly formed part of the large rear garden attached to 32B Howth Road, and is accessed from the Howth Road via an access laneway also giving access to the Council's pumping station.

Church Road meets the Howth Road at a junction opposite the access laneway.

1.2 A large detached, flat-roofed dwelling is under construction on the site and is nearing completion. The dwelling was occupied at the time of inspection. The dwelling is two-storey above a large basement, which was sub-divided into a series of rooms. These rooms did not have windows with access to natural light.

1.3 The elevation facing south has a patio/balcony at ground level with associated outdoor furniture. At first floor level there is a large, flat roof bordered by glass panels; this can be accessed by doors off a bedroom.

1.4 There is a planting screen along the southern site boundary with 32B Howth Road.

## **2. Proposed development.**

2.1 The proposal is for Retention and for Permission.

Retention is sought for the following:

- Raised floor level of dwelling as constructed
- Non-habitable storage and plant rooms below floor level of the house
- Elevational variations and changes to the dwelling including balcony area and external steps and ramp
- All ancillary site works

This is at variance to Grants of permission Reg Refs: F15A/0414, PL 06F.246598, F15A/0414E1.

Permission is sought for the following:

- To revise the position and location of the entrance gates and piers to form a deeper recess from roadway
- Ancillary site works.

2,2 The gross floor area to be retained is stated to be 431sqm, and the site area is 0.165ha. It is proposed to connect to public services. Two car parking spaces are proposed.

## **3. PA's Decision**

3.1 The Planning Authority decided to Grant Permission and Grant Retention subject to 7 conditions.

3.1.1 The conditions relate to the following:

1. Compliance
2. Entire premises to be used as a single dwelling unit
3. Tree protection and Biodiversity requirements
4. Transportation requirements
5. Drainage requirements
6. Prevention of spillage etc
7. Hours of operation

**3.2 The Planner's Report** states that the site is an area zoned 'RS' the objective of which is to provide for residential development and protect and improve residential amenity. The proposed development is acceptable in principle. Further Information is recommended. Following the submission of Further Information, Parks, Transportation, and Water Services have no objection. The topographical drawing submitted appears to meet requirements. Details include levels and adjacent sites. Elevations submitted meet requirements and adequately show the increased levels of the house as constructed, amended profile and changes to fenestration and external doors. There are adequate details to assess the principle of the application. Elevations are acceptable. Further information on tree planting may be required by way of condition. The house was originally granted on appeal and this established the principle of a relatively large and tall house on the site. The increase in height now sought is relatively slight. The house is not largely visible from the public road. Adjoining houses and properties have large mature gardens. Separation distances are in excess of 16m, and the proposal is considered in an urban infill context. Proposed planting would prevent significant overlooking of neighbouring properties. The amendments do not significantly detract from what was originally permitted, and subject to conditions, the development is acceptable.

**3.3 Further Information**, received on 19<sup>th</sup> December 2024, relates to the following:

- Topographical Survey showing the constructed dwelling and the ridge height of adjacent dwellings
- Revised elevations showing dwelling as granted, dwelling as constructed, and dwelling as constructed with changes from permission granted overlayed
- Contiguous front and rear elevations showing relationship with existing surrounding dwellings and those under construction
- Traffic sign location at entrance to be maintained
- Legal interest documents
- Revised Site Layout Plan showing amended location and size of soakaway
- Receipt of payment of Tree Bond
- Report by CMK Hart addressing the proposals for the southern boundary in the form of additional landscaping to address potential overlooking.

3.4 Parks Division have no objection subject to conditions. Transport Planning have no objection subject to conditions. Water Services Department have no objection, including no objection in relation to Flood Risk.

#### **4. Planning History**

4.1 06F.246598 – Permission granted on appeal for a two-storey, four bed dwelling and new vehicular access on to private laneway from Howth Road, on site forming part of the rear garden of 32B Howth Road. The permission is subject to 8 conditions, which relate to the following:

- 1 Standard compliance, including Further Information (2 submissions)
- 2 Water supply and drainage
- 3 Trees and hedgerows requirements
- 4 Landscape and boundary treatments requirements
- 5 External finishes
- 6 All bathroom and en/suite windows and stairwell window on the western elevation to be fitted with obscure glazing
- 7 Construction Management Plan
- 8 Site development and building works hours.

#### **5.1.Planning Policy**

5.1.1 The Fingal Development Plan 2023-2029 is the relevant Plan. It came into effect on 5<sup>th</sup> April 2023.

5.1.2 The site is zoned 'RS' with the objective '*to provide residential development and protect and improve residential amenities*'.

5.1.3 The site is in Landscape Character – Coastal, highly sensitive landscape.

5.1.4 Table 14.4 relates to Infill Development. It states that proposals for infill development will be required at a minimum to: "

- Provide a high-quality design response to the context of the infill site, taking cognisance of architectural form, site coverage, building heights, building line, grain, and plot width.
- Examine and address within the overall design response issues in relation to overbearing appearance, overlooking and overshadowing.
- Respect and compliment the character of the surrounding area having due regard to the prevailing scale, mass, and architectural form of buildings in the immediate vicinity of the site.

- Provide a positive contribution to the streetscape including active frontage, ensuring that the impacts of ancillary services such as waste management, parking and services are minimised.
- Promote active street frontages having regard to the design and relationship between the public realm and shopfronts of adjacent properties.

## **5.2 Natural Heritage Designations**

- Baldoyle Bay SAC & pNHA – c.256m to the north
- North Dublin Bay SAC, SPA & pNHA – c. 322m to the south west
- North Irish Sea SPA – c.355m to the north
- Baldoyle SPA & pNHA – c. 571m to the north west.

## **6. The Appeal**

### **6.1 Third Party Appeal.**

6.1.1 There are two Third Party appeals which may be summarised as follows. A further appeal was originally submitted but withdrawn.

#### **Appeal 1**

- The appellant does not question the original decision for the site (Ref. 06F.246598). He is now faced with a very different development that could have significant impacts on the residential amenity of his property, the development potential of his large garden, and the value of his home. The development should be conditioned to comply with conditions 1, 4 and 6 of the earlier permission at least.
- Nearly all of the unauthorised changes made to the house and curtilage contradict the Boards earlier concerns regarding visual and residential amenities. The addition of the raised ground floor patio area and the balcony on the first floor on the southern elevation will have a serious and negative affect of the appellants and his neighbours' residential amenity.
- The drawings submitted do not accurately reflect the development for which permission is sought. There is no contiguous view to show the scale, massing and extent of the development relative to the appellants' garden. There is an increase of 560mm in the finished floor level omitted from the drawings. The balcony is not mentioned in the public notices. It directly overlooks the appellants' Private Open Space and property from 2 metres.

- The unauthorised changes to the development are both significant and substantial and would have been refused permission by the Board if included in the original application. The balcony elements proposed for retention must be refused.
- Any financial contribution requirement should reflect the increased area of the house (E25,138.00)
- The changes to the floor area, addition of balconies, stairs, clear glass windows, create a significant level of disamenity. They also affect the development potential of the appellants' property. At a minimum the balconies should be removed.

## **Appeal 2**

- The development will result in a diminution of the appellant's residential amenity and his property value
- The 3-storey dwelling is visually incongruous and would directly overlook the appellant's property
- The development is contrary to the zoning objective and stated vision
- Two terraces are accessible from the house and there is no screening of these prominent terraces. They can directly overlook the appellant's rear garden and rear rooms. The upper terrace has a glass safety barrier and is intended as an amenity area. This terrace and the lower terrace are not part of the current application
- The Planning Authority concluded that the basement area is not suitable for habitation but this is contested by the appellant
- The subject structure is largely visible at this location
- Forward movement of cars on the sloped raised driveway causes light to flood the appellant's property at nighttime. The driveway is unauthorised and is not shown on the plans originally approved, and is not referred to in the public notices for this development
- A far lower finished floor level (FFL) should have been applied because the site is in Zone C geographical flood zone, which is the lowest risk zone. This is now exacerbated by the raising of the FFL by 0.6m.

- Granting permission would set an undesirable precedent for similar developments with adverse implications for visual and residential amenities
- The development depreciates the value of the appellant's property
- Permission should be refused. If permission is being considered, screening of the balconies and southern boundary should be conditioned.

The grounds of appeal attach the observation submitted to the Planning Authority during consideration of the application.

## **6.2 P.A. Response**

6.2.1 The application was assessed against relevant policy and guidance. The Authority concluded that the changes were relatively minor compared to what was originally granted. The finished floor levels are 590mm higher, but the original permission established the principle of a relatively large and tall house on the site. The visual impact of the house as constructed is slight and adequate separation distances are provided. There is no significant overlooking of neighbouring gardens. If the Planning Authority decision is upheld, provision should be made for a financial contribution for any shortfall in open space, a Bond/Cash Security for residential developments of 2 or more units, and a tree bond or contribution in respect of a shortfall.

## **7. EIA Screening**

The proposed development for retention and for permission is not of a Class contained in Schedule 5 and, as such, the need for screening or EIA does not arise.

## **8.0 Assessment**

8.1 There are 2 elements to this proposal. Permission is sought for revision to the position and location of the entrance gates and piers at the Howth Road entrance to the site. Retention permission is sought for the raised floor level of the dwelling as constructed, non-habitable storage and plant rooms below the floor level of the house, elevational changes including balcony area and external steps on ramp, and ancillary site works.

8.2 Permission was previously granted, subject to conditions, for a dwelling on this site under Reference PL06F.246598, and for entrance under Reference F15A/0414E1.

8.3 There are two 3<sup>rd</sup> party appeals against the planning authority's decision to grant permission. These relate to visual amenities, residential amenities, adequacy of drawings and public notices, devaluation of property, impact on development potential of adjoining property, potential residential use of basement, and undesirable precedent.

8.4 I consider that the key issues to be addressed are as follows:

- Policy
- Planning history
- Adequacy of submitted public notices and drawings
- Impacts on the amenities of the area
- Basement use
- Precedent
- Access arrangements
- Appropriate assessment
- Other issues

### **Policy**

8.5 The site is in an area zoned 'RS' with the objective *'to provide residential development and protect and improve residential amenities'*. This is the same as the zoning that applied in 2016, when permission was granted for a two-storey, four bed dwelling on the site. The development proposed, and for retention, is permissible in principle under the zoning objective as set out in the current Development Plan.

### **Planning history**

8.6 There is an extant permission for a two-storey, four bedroom dwelling on the site, with a stated floor area of 219sqm, and with access via a laneway from Howth Road (Ref: 06F. 246598). As such, the principle of a sizeable two-storey dwelling on the site is established.

8.7 The dwelling as constructed is considerably larger at 431sqm, including a large non-habitable storage level, and a balcony at the raised ground level, and an accessible flat roof area at first-floor level.

### **Adequacy of submitted public notices and drawings**

8.8 The development was advertised in the Irish Daily Star on 1<sup>st</sup> May 2024, and by a Site Notice. The public notices described the proposal for retention permission and planning permission as follows:

*The development consists of and will consist of (1) Raised floor level of dwelling as constructed (2) Non-habitable storage and plant rooms below floor level of house (3) Elevational variations and changes to the dwelling including balcony area and external*



*steps and ramp (4) All ancillary works. This is at variance to Grants of Permission F15A/0414, PL06F.246598, F15A/0414/E1. Permission for (1) to revise the position and location of the entrance gates and piers to form a deeper recess from roadway (2) ancillary site works.*

Following the submission of Further Information, new public notices advertised the development.

8.9 I note that the description of the development refers to elevational variations and changes to the dwelling including balcony area. While this is a broad description (and does not specifically refer to the replacement of a window with doors leading on to a large flat roof at first floor level), I consider that the notices adequately describe the development for retention and for planning permission.

8.10 The drawings on file include drawings submitted with the application, and drawings submitted by way of Further Information. These include drawings showing the development as constructed compared with the development previously granted. I consider that the submitted drawings are adequate to allow an informed assessment of the development proposed for retention and for permission.

### **Impacts on the amenities of the area**

8.11 The development is visually prominent in the immediate vicinity of the dwelling, but is not visually prominent or overbearing from the public road. Having regard to the planning history for the site, I consider that the increased height of the dwelling is acceptable in terms of visual amenity.

8.12 The appellants contend that the terraces can directly overlook adjacent property. The submitted drawings show a 'flat roof' at first-floor level, but with the permitted window to bedroom 3 replaced by doors, this is accessible for recreational use. The 'flat roof' is bounded by low glass panels.

8.13 The ground floor balcony is enabled by the raising of the height of the dwelling, and the provision of the non-habitable storage level below the ground level. This balcony is furnished and used for recreational purposes. New planting is provided along the southern site boundary greatly reducing the potential for overlooking from this balcony. Having regard to this screening, and the separation distance to the dwellings on Howth Road, I consider that the ground floor balcony/patio is acceptable and does not give rise to an unacceptable degree of overlooking.

8.14 The permitted southern elevation of the dwelling shows a window serving Bedroom 3. Retention is sought for the replacement of this window by doors. These doors give direct access on to a sizeable flat roof area bounded by glazed panels. While this 'flat roof' area is set back further from the southern boundary relative to the ground floor

balcony/patio, it overlooks the rear of properties on Howth Road. On balance, having regard to its elevation, I consider this overlooking to be excessive, and seriously injurious to the residential amenities of adjacent property on Howth Road. I recommend that the retention of the doors from Bedroom 3 be refused, as they provide direct access on to a sizeable 'flat roof', from which overlooking is excessive.

### **Basement use**

8.15 The non-habitable storage basement is extensive. It is nearing completion and takes the form of a series of individual rooms and plant room. There are access doors on the western elevation, but no windows provided. Appellants contend that the area may be suitable for residential use. The public notices and submitted drawings clearly show rooms as 'non-habitable'. Based on the information on file, I conclude that the basement is for non-habitable storage.

8.16 An appellant contends that the raising of the height of the dwelling allowing for a non-habitable storage basement, exacerbates flood risk. The Water Services Department report dated 13<sup>th</sup> January 2025 states that there is no objection in relation to Flood Risk. Based on the information on file, I conclude that there is no flood risk related to the development.

### **Precedent**

8.17 There is an extant permission for a large two-storey, four bedroom house on the site. A dwelling is under construction on an adjacent site to the west. In these circumstances, I consider that precedent for new housing in the area, and for a prominent two-storey dwelling on the subject site, have been established.

### **Access arrangements**

8.18 The laneway is owned by Fingal County Council. By letter dated 11<sup>th</sup> October 2024 the County Council stated consent for the making of the planning application. The 1<sup>st</sup> Party landholding is indicated on Drawing A3-001.

8.19 Access to the site is gained along the laneway adjoining the western boundary of 32B Howth Road. This was also permitted under the extant permission for the site. It is now proposed to reconfigure the entrance on to Howth Road setting back the entrance gates by 3 metres. The entrance as proposed would be 4.5m wide. The Transport Planning Section have no objection to the proposal. In the circumstances, I consider that the proposed development is acceptable.

### **Appropriate Assessment**

8.20 I have considered the development proposed for retention and development proposed for permission in light of S177U of the Planning and Development Act 2000 as

amended. The subject site is located in an established residential area, separated from designated European sites. The development consists of the retention of raised floor level of dwelling as constructed, non-habitable storage and plant rooms below the floor level of the house, elevational changes including balcony area and external steps on ramp, and ancillary site works. Permission is also sought for reconfiguration of previously permitted access. Having regard to the nature of development, location in an existing residential area, and separation from and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **Other issues**

8.21 Appellants contend that permission for the development proposed to be retained could have an adverse effect on the development potential of surrounding property. I consider that this contention is unsubstantiated, and that any future proposals would have to be assessed on their own merits. I conclude that this would not be a reasonable ground for refusal.

8.22 Appellants contend that the development could lead to a devaluation of their property. There is no evidence to support this contention submitted.

8.23 No Council owned trees are to be removed in the proposed development.

8.24 In its response to the grounds of appeal, the Planning Authority state that if the decision is upheld, provision should be made for a financial contribution for any shortfall in open space, a Bond/Cash Security for residential developments of 2 or more units, and a tree bond or contribution in respect of a shortfall. I do not consider that such a financial contribution is appropriate having regard to the nature of the development proposed and proposed for retention.

8.25 Having regard to the planning history for the site and the permitted access arrangements, I consider that it would be not be reasonable to refuse permission on grounds relating to any adverse impact of car lights using the access laneway.

## **10. Recommendation**

I recommend that permission for retention and for proposed development be granted.

### **Reasons & Considerations**

Having regard to to the residential zoning objective as set in the Fingal Development Plan 2023-2029, and to the planning history relating to the site, it is considered that, subject to the attached conditions, the development would not be seriously injurious to the residential amenities of surrounding property, would provide safe residential access, and would be in accordance with the proper planning and sustainable development of the area.

## **Conditions**

1. The development to be retained and carried out shall be in accordance with the plans, particulars and specifications lodged with the application, and further information submitted on 16<sup>th</sup> January 2025, save as may be required by other conditions attached to this permission

**Reason:** In the interest of clarity.

2. The entire premises shall be used as a single dwelling unit

**Reason:** In the interest of clarity.

3. The doors serving Bedroom 3, giving access on to the 'flat roof' area, shall be omitted, and replaced by a window, similar in size and design to that permitted under Reference: 06F.246598. No access from the dwelling on to the 'flat roof' from the dwelling for recreational purposes shall be permitted. Details of this amendment shall be agreed in writing with the Planning Authority within 3 months of the date of this permission, and the development shall be carried out within a further 3 months of the date of the written agreement.

**Reason:** In the interest of residential amenity by preventing overlooking of surrounding properties.

4. Drainage arrangements, including disposal of surface water, shall be in accordance with the requirements of the Planning Authority.

**Reason:** In the interests of sustainable drainage and public health.

5. The developer shall submit and agree in writing with the Planning Authority a Tree Protection Plan and Arboriculture Method Statement indicating how the trees in proximity to the proposed entrance shall be retained and protected during construction.

**Reason:** In the interest of amenity.

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Des Johnson

Planning Inspector

Date

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.

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	322043-25		
<b>Proposed Development Summary</b>	Retention of changes to permitted detached dwellinghouse, and permission for vehicular entrance		
<b>Development Address</b>	Lands to rear of 32B, Howth Road, Sutton, Co. Dublin.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	Yes
		<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>			
<b>No</b>	No		
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			
<b>No</b>			
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>			

5. Has Schedule 7A information been submitted?		
No	No	
Yes		

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_