



development would not be in compliance with Development Plan policies and would not therefore be in accordance with the proper planning and sustainable development of the area. These points will be dealt with in more detail below.

## **1.2 Zoning**

The proposed development site is located in an area zoned Objective “A” in the Development Plan for which it is an objective “*to protect, and/or improve residential amenity*”. The primary purpose of this zoning objective is the protection of the existing residential amenities of the people residing in the area.

The appellants support the zoning objective for the area in the belief that it is designed by the Planning Authority to ensure that the local residents’ long-standing amenities will be protected from unsuitable development proposals.

Nursing home development is permitted in principle under the zoning objective. My clients have no objection to the principle of some limited redevelopment of the subject site but what is proposed is far in excess of what is acceptable under the zoning and in an ACA. It must also be emphasised that the principle objective of the zoning objective is the **protection and/or improvement of existing residential amenities** in the area. However for the reasons outlined in this appeal the appellants are of the opinion that the subject development would result in a diminution of the existing residential and visual amenities of the area and would therefore be contrary to the zoning objective.

## **1.3 Architectural Conservation Area**

Foxrock is a garden suburb with a distinctive character which is recognised as part of our architectural and social heritage. As such it is deemed to be worthy of preservation, as its designation as an ACA in the current Dun Laoghaire-Rathdown County Development Plan 2016-2022 acknowledges.

In designating Foxrock as an ACA the Planning Authority recognised that the unique qualities of the area require special protection under the planning system. These qualities derive from its being a low-density residential area dating from the 1860s onward, which is characterised by large single-family dwelling-houses on generous sites in a sylvan setting of mature trees and hedges. This type of suburban development is a recognised urban design type generally known as “Arcadian”. The essential feature of the Arcadian suburb is the use of landscape to enclose the buildings, creating the illusion of a rural environment in a residential area. This fragile suburban landscape is already under severe pressure and is in danger of being destroyed by excessive traffic and attendant development pressures. It therefore requires particular protection under the Planning Legislation.

The Development Plan Policy in relation to ACAs (Par.6.1.4.1 : Policy AR12) is stated as follows:

- i. Protect the character and special interest of an area which has been designated as an Architectural Conservation Area.
- ii. Ensure that all development proposals within an ACA be appropriate to the character of the area having regard to the Character Appraisals for each area.
- iii. Seek a high quality, sensitive design for any new development(s) that are complimentary and/ or sympathetic to their context and scale, whilst simultaneously encouraging contemporary design.
- iv. Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

The Development Plan stresses that while the purpose of ACA designation is to protect and enhance the special character of an area, it should not be viewed as a means of preventing new development but rather to help guide and manage change to ensure developments are sympathetic to the special character of the ACA.

The planning authority's character appraisal carried out prior to the designation of the Foxrock ACA describes Foxrock as *"important both architecturally and historically and provides a social commentary on the residential development of this part of Dun Laoghaire Rathdown over a 170-year period. Developed as a garden suburb in the mid-nineteenth century, the houses are principally residential dwellings of a higher socio-economic type. Having been developed in a number of phases, the area reflects a number of periods of historical development, which has resulted in a variety of character of house types. However, distinct characteristics are evident in dwellings from each phase of development."*

The report goes on to state that *"The architectural character of the area is created not just by the design of the individual structures. A significant aspect of its character is informed by the layout of sites, the setting of buildings within the sites and the surrounding landscaping.....The overall visual character of the area is sylvan in nature characterized by low density residential development with well enclosed road corridors which are almost rural in character. The well-defined road edges are enclosed by mature planting and property boundaries which generally consist of a limited palette of natural materials including granite walls, timber and metal fencing and gates or hedging. In urban design terms this type of development is described as 'Arcadian' a concept given its clearest formulation in the Essex Design Guide first published in 1973."*

Brighton Road is an essential component of the Foxrock ACA. The road, which forms the back-bone of the ACA encapsulates the intrinsic character of the area which the ACA seeks to preserve. The Character Appraisal Report stresses the spatial quality of the road and notes the mixture of soft and hard boundary treatments along the road. It praises the quality of the edge which is consistently good.... *"with the exception of Hollybrook, a recent development where the loss of original soft roadside boundary*

*allows unrestricted open views into the development, which is uncharacteristic with the prevailing secluded nature of Foxrock."*

The impact of any proposed development on Brighton Road is therefore an important consideration in determining the acceptability of a proposal.

The Appellants consider that whatever its other merits, the overdevelopment of the subject site and the traffic which the proposal will generate are at odds with the underlying principles of the ACA and will create another Hollybrook, a development which was considered so out of character with the area, that its genesis galvanized the local community into seeking ACA status for the area. The appellants consider that one Hollybrook on Brighton Road is quite enough, the ACA could do without any further developments of this nature.

The Bord's specific attention is drawn to the Conservation Officer's report of 29.01.16, which is included with the Planners report on the application file. A copy of this report is attached to this appeal (Appendix 1). In recommending refusal of planning permission the Conservation Officer notes that *"The scale, footprint and massing of the proposed three-storey over basement development is substantially larger in scale and massing than the immediate neighbours (both of which are protected structures). The development therefore does not reflect the existing pattern of development of the Foxrock ACA. I would be opposed to the development in its present form as it is not considered to protect or enhance the special character of the ACA and is therefore contrary to Policy AR8 to protect the special character of places or areas which have been designated Architectural Conservation Areas."*

Again as noted in the Conservation Officer's report, the site of the proposed development is flanked on either side by properties which are listed as Protected Structures in the Development Plan. The Planning Authority has a duty of care to protect the setting of Protected Structures, particularly where located in an ACA, in accordance with the stated policy outlined above. The conservation principles of care and protection of the architectural heritage is enshrined in the Local Government (Planning and Development) Act 1999 and Part IV of the Planning and Development Act 2000. The legislation emphasizes that planning authorities have a clear obligation to preserve the character of places and townscapes which are of special architectural, historic, archaeological, artistic, cultural, scientific, social or technical interest or that contribute to the appreciation of protected structures, by designating them as ACAs in their development plan.

The Development Plan states (Section 2.1.3.3: policy RES3) that it is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and

objectives contained in the Government Guidelines, including inter alia the guidelines: for ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009). which state that *“In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill..... The design approach should be based on a recognition of the need to protect the amenities of directly adjoining neighbours and the general character of the area and its amenities, i.e. views, architectural quality, civic design etc.”*

Bearing this policy in mind and given that the subject site area is stated to be 0.55 ha, we have calculated that the proposed development has a plot ratio of 1.18 (currently 0.064) and a site coverage of 31.5% (currently 3.5%). The proposed plot ratio and site coverage are far in excess of the prevailing values in the surrounding area and while they be acceptable in other parts of the planning authority’s functional area, they are unacceptable in an ACA whose stated importance is rooted in its “Arcadian” character.

The very status of the ACA is dependent on the retention of its existing sylvan suburban character, characterised by large detached houses on substantial gardens, with many mature trees and hedgerows. It is a sensitive area with an established character and ambience. The proposed development comes nowhere near striking the balance referred to in the Guidelines quoted above. The physical and visual impact of the proposal will be completely at odds with the general character of the ACA and the neighbouring protected structures. The appellants contend that the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

#### **1.4 Building Scale**

Having regard to its location within an ACA, the overall visual character of which in the words of the Conservation Officer *“is sylvan in nature characterized by low density residential development”* the appellants consider that the increase in the plot ratio and site coverage envisaged by the proposed development would result in overdevelopment of the site.

For the same reason and due to its close proximity to the adjoining protected structures, the proposed development would visually dominate and detract from the character and setting of the protected structures and the ACA.

Furthermore the proposed nursing home has a substantial footprint covering one third of the site area, not to mention associated areas of roadway and paving. The ACA is characterised by low density residential development, which is a general maximum of 2-storeys in height, all with pitched roofs, some of which have developed attic accommodation.

The appellants accept that nursing home use is acceptable in principle under the zoning objective but reject the planning officer's decision that it has to be a building of this size and scale. Attention is drawn to a relatively recent decision by the Bord to grant planning permission for a residential development with access from the other side of Brighton Road (ABP ref. PL06D.243193; PA ref. D13A/0285). Most of the development referred to is backland development outside the boundaries of the ACA. However there is one small block of apartments on a site fronting on to Brighton Road which is located within the ACA. This consists of a two-storey building with a pitched roof containing attic-level penthouse accommodation. The building is set on a relatively generous landscaped site and is generally in keeping with the surrounding ACA in terms of scale, site coverage and plot ratio. A building of this type, albeit a nursing home, and not necessarily pastiche architecture, would be acceptable in reflecting the prevailing aesthetic of the ACA. The Bord is therefore urged to reject the current proposal while at the same setting out parameters for the applicant to abide by in any future reapplication for the subject development.

### **1.5 Inconvenient Location**

In their submission to the planning authority the appellants argued that the location for the proposed development would be most inconvenient for the use proposed. They pointed out that Policy RES9 (Section 5.4.3) of the 2010-2016 Development Plan stated that *"It is Council policy that proposals for accommodation for the elderly should be located in existing residential areas well served by infrastructure and amenities such as footpath networks, local shops and public transport in order not to isolate residents and allow for better care in the community, independence and access. This preference, and presumption towards convenient locations apply to any scheme whether provided by communal set-ups or similar, facilities providing higher levels of care, self-contained units or a mix of these."*

This policy has been restated and expanded upon in the recently adopted 2016-2022 Development Plan (Section 8.2.3.4 (xiii)) which states that when dealing with planning applications for Nursing Homes for the Elderly/Assisted Living, a number of criteria will be taken into account including inter alia:

- *Such facilities will be resisted in remote locations at a remove from urban areas. They should be located into established neighbourhoods / residential areas well served by community infrastructure and amenities. Future residents should expect reasonable access to local services such as shops and community facilities.*
- *The potential impact on residential amenities of adjoining properties.*
- *Adequate provision of open space.*
- *Provision of adequate parking facilities.*
- *The design and proposed materials.*
- *The size and scale of the proposal must be appropriate to the area.*
- *Located within close proximity of high quality public transport links and the site should be well served by good footpath links.*

My clients pointed out that a 121 bedroom (124 bed-space) nursing home by its nature will be a particularly busy facility which will generate very considerable vehicular traffic at all hours of the night and day. The planning authority was asked to consider the comings and goings of residents, visitors, doctors, nurses, ambulances, service and supply vehicles, hearses and funeral cars, and a range of specialists including physiotherapists, chiropodists, hairdressers etc. Very few of these comings and goings will be by means of public transport. Elderly residents or their visitors are unlikely to avail of the nearest public transport routes because of the distance that has to be traversed along and across busy traffic routes, with narrow footpaths and steep hills. For similar reasons walking to local shopping centres such as Foxrock Village, Cornelscourt and The Park (each one of which is approximately 1.4 km from the subject site) will not be feasible for the residents. There is no public open space in the immediate area, the nearest such facility being Cabinteely Park, which is 1.5 km away, again by way of narrow footpaths and steep hills. The distances from and difficult pedestrian access to transportation links, shopping facilities and open space ensure that the proposed development will be car-based and car-dependent for staff, residents and visitors alike.

The appellants pointed out that in view of the above, the subject development would fail to comply with the requirements of Policy RES9 in that it is not in a convenient location, it is not well served by footpath networks or local shops and the public transport infrastructure will not be readily accessible to the residents of the complex, resulting in a curtailment of their independence and consequential isolation. With the adoption of the new Development Plan in March of this year, these inadequacies are even more glaringly at odds with the stated policy of the planning authority.

The appellants argue that the planning authority exceeded its authority in deciding to grant planning permission for a development which over-rode its own stated and re-stated policy and would be in contravention of its own adopted Development Plan.

#### **1.6 Traffic, Parking and Access**

The appellants consider that the applicant has failed to demonstrate that the traffic which will be generated by the proposal will not affect the special character of the ACA. On the contrary they are concerned that the proposed development, whose main access is through a single access point onto a road in the middle of an ACA, which is inadequate for the volume of traffic it currently has to cater for, will materially contravene the objective to preserve the character of the area and will add greatly to the existing congestion and traffic hazard in the area.

Access to the subject site will be located on Brighton Road within 50m of a major cross-roads. Brighton Road at this point is a narrow, two lane road which is often congested due to its proximity to the cross-roads. There is no place to park on this road or on adjoining roads. Our clients submit that due to the fact that the surrounding roads cannot facilitate additional parking, the applicant should have

provided additional car parking spaces. The number of parking spaces proposed is inadequate for a 124 bed-space nursing home. Staff will include administrators, nurses, care assistants, catering and maintenance staff, in addition to visitors and visiting general practitioners. An increased number of car parking spaces should therefore be provided to facilitate staff and visitors, bearing in mind that staff will work shifts around the clock with an overlap in parking requirements at ends of shifts.

However with or without additional parking the traffic generated by the proposal will be decanted directly into the ACA, thereby affecting its amenity and special character for the worse. Brighton Road and its continuation, Torquay Road, form the back-bone of the ACA. Both roads were conceived as residential access roads to cater for limited suburban traffic in the Victorian era at a time when Foxrock and Carrickmines had their own railway stations. Neither road was designed to cater for the volumes of traffic they are now expected to carry. These traffic volumes have been generated and compounded by a number of factors, including the following:

- Carrickmines cross-roads will be within 50 metres of the main access point to the subject development. The route from Junction 15 on the M50 to the N11 at Cornelscourt embraces Glenamuck Road North, Claremont Road, Cornelscourt Hill Road and Cornelscourt Village. Carrickmines cross-roads is a traffic-lights controlled four-way junction where Brighton Road, Claremont Road, Brennanstown Road and Glenamuck Road North meet. With the exception of the latter, all are sub-standard roads which were not designed to cater for the traffic now using them, including commuter and school traffic from the M50 and the Glenamuck development area, heavy commercial traffic linking between the N11 and the M50, as well as supply trucks servicing Dunnes Stores in Cornelscourt, commuters from the Cabinteely area heading to Sandyford Business Park, and horse-boxes coming and going to Leopardstown Race-course for each of the many race-meetings held there per annum. The excessive volumes of traffic handled by this junction ensures that there are long queues of traffic idling on all of the approach roads while awaiting a change of lights, particularly at peak times.
- Brighton Road is substandard in terms of width and geometry for what is in fact a district distributor road. It is also a de facto parallel link road to the Sandyford-Carrickmines section of the M50 motorway, linking the wider Carrickmines/Foxrock/Cabinteely area with the Sandyford and Stillorgan Business Parks, which have seen massive development in recent times. This generates a lot of traffic whose origin and destination are outside the area.
- The no. 63 from Kiltiernan to Dun Laoghaire is the only bus route serving the area. It is little used because of its meandering route and infrequent service. Although there is a Luas stop at Carrickmines, which is approximately 700m from the subject site, it is out of pedestrian reach for most of the residents of the ACA, who are forced to use their cars to a greater extent than might otherwise be normal. Paradoxically the development of a park and ride facility at Carrickmines Luas stop has led to an increase in traffic at Carrickmines cross-roads at peak times.

- Brighton Road, in common with Claremont Road and other roads in the ACA, has narrow footpaths (down to 1.3m wide in places) which are quite close to the vehicular traffic, leading to an uncomfortable and potentially hazardous environment for pedestrians, particularly elderly persons and wheelchair users.
- A number of higher density infill residential developments have been developed in recent years with direct access to Brighton Road. As with the rest of the general area, these developments are car-dependent and have added to the traffic volumes on Brighton Road. Furthermore planning permission has recently been granted for a further 100 houses whose sole access will on to Brighton Road (Reg. refs: D13A/0285 and D15A/0501). This development is due to commence construction within the coming few weeks and the construction traffic, together with the necessity to close major sections of Brighton Road to provide for sewerage and drainage connections will further exacerbate the existing and future traffic congestion.
- The planning authority has failed to provide or facilitate the car-park for Foxrock Village which was a specific local objective of 2010 – 2016 Development Plan, and which has been dropped from the current Development Plan. Foxrock Village, where Brighton Road, Torquay Road and Westminster Road meet in the heart of the ACA, is a busy local centre and the lack of an off-street parking facility has led to day-long parking along the approach roads. This has led to congestion arising from necessary cautious manoeuvring to pass through the village.
- Services, including weddings and funerals, at Tullow Church, which is beside the subject site, generate further parking problems and traffic congestion in the area

To sum up, the appellants contend that the additional traffic and turning movements generated by the proposed development would create an additional traffic hazard in an area where the existing road network is inadequate and beyond capacity, and in particular bearing in mind the narrow footpaths and the numbers of frail and elderly persons who would be using them. The proposed development would therefore endanger public safety by reason of traffic hazard and as a consequence would be contrary to the proper planning and sustainable development of the area.

### **1.7 Loss of trees**

The proposed development would result in the loss or removal of mature trees from the site. Even though replacement planting is proposed the loss of the existing mature trees would seriously injure the visual and residential amenities of the ACA and would contravene Development Plan Policy OSR7: Trees and Woodland (Section 4.2.2.6) *“to implement the objectives and policies of the Tree Strategy for the County – ‘dlr TREES 2011-2015’ - to ensure that the tree cover in the County is managed and developed to optimise the environmental, climatic and educational benefits which derive from an ‘urban forest’.* Even trees which are proposed to be retained cannot but be impacted upon by the extremely large footprint of the proposed development, the amount of paved area and the development of the basement with its impact on

the water table and drainage characteristics of the site. These impacts will have effects outside the immediate boundaries of the development site itself, putting at risk mature trees on adjoining properties. The applicants' landscape consultants have put forward proposals to alleviate these potential impacts, but the question has to be asked as to why it is necessary to put these trees at risk in the first place.

My clients ask An Bord Pleanála to consider whether the proper planning and sustainable development of an important ACA is being served by permitting the replacement of a single house of 350 sq.m. in floor area by a four-storey development (including basement) of 6500 sq.m. which apart from any other considerations, involves the actual loss of a number of mature trees and potential loss of others. The ACA was established to provide a measure of protection for a fragile urban landscape. An Bord Pleanála must therefore address the question of whether the proposed development, whatever its merits, is an acceptable development within the ACA.

## **2.0 CONCLUSION**

The appellants reject the Planning Authority's acceptance of the size and scale of the proposed development as being an appropriate development in the ACA, and reiterate their objections on the following grounds:

- Contravention of the zoning objective to *"to protect, and/or improve residential amenity"*.
- Contravention of the principles underlying the ACA status of the area.
- Excessive size and scale.
- Contravention of the Development Plan policy on Nursing Homes for the Elderly.
- Potential traffic hazard.
- Loss of trees.

The appellants argue that, in the light of the above points, the proposed development is contrary to the proper planning and sustainable development of the area. The appellants therefore request An Bord Pleanála to overturn the decision of the Planning Authority and refuse planning permission for this proposal in its entirety, while at the same setting out parameters for the applicant to abide by in any future reapplication for this type of development in the Foxrock ACA.

Yours faithfully

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**Feargall Kenny**

**Appendix 1**

**Copy of Conservation Officers Report dated 29.01.16**

## **Appendix 2**

### **Planning Authority's Acknowledgements of Appellant's Submission**

