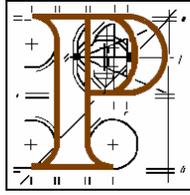


An Bord Pleanála



Inspector's Report

An Bord Pleanala Reference PL 29N.236992

DEVELOPMENT: Retention of alterations to approved rear extension under Reg Ref 6678/07 at No 20 Fury Park Road, Raheny. Dublin 5

PLANNING APPLICATION

Planning Authority: Dublin City Council
Planning Authority Reg. No: 4360/09
Applicant: Eddie & Eithne Chandler
Application Type: Permission to Retain
Planning Authority Decision: To Grant Permission to Retain

APPEAL

Appellants: Seamus & Maeve Deary
Type of Appeal: Third Party
Date of Inspection: August 17th, 2010
Inspector: Breda Gannon
Appendix 1: Annotated Photographs
Site Plan/Extracts from Development Plan

INTRODUCTION

This is a Third Party appeal against the decision by Dublin City Council to grant permission for the retention of the development.

SITE LOCATION AND DESCRIPTION

The site is located at No 20 Furry Park Road, Raheny Dublin 5. It forms part of an established residential development of terraced housing to the west of Howth Road. The site accommodates an end of terrace two-storey dwelling with later extensions to the rear. It has a narrow rear garden enclosed by walls/fence. To the front of the house there is a paved area suitable for car parking. There is a side access separating the property from the adjacent house to the east. There is also a right of way running to the rear of the property.

PLANNING APPLICATION

The development is described as follows in the public notices submitted with the application:

'Retention of as built alterations to the side wall of the rear extension approved under previous permission Reg Ref 6678/07 comprising;

- (1) The building of side wall in line with the existing gable wall of the house and*
- (2) The re-positioning of 1 No. window previously approved under Reg Ref 2112/09 located at ground floor level in the side wall of the extension'.*

Further information was sought on the application on 25/1/10 on matters relating to the boundary line, length and height of the boundary wall, separation distances, location of all buildings on the site etc. Revised drawing No 673/RT 12 was submitted on May 4th, 2010, which addressed the issues raised by the planning authority.

PLANNING HISTORY

1. **6678/07** – Permission granted for a two-storey and single-storey pitched roofed, residential extension to the rear of the property.
2. **2112/09** - Permission granted for 'as built' alteration to the side elevation approved under Reg Ref No 6678/07 to comprise the enlargement of stairwell window glazed in fixed and frosted glass, the provision of 1 no. new window glazed in fixed and frosted glass at ground floor level and 1 no. bathroom window at first floor level with opening light.

PLANNING AUTHORITY REPORTS

The **Planning Officer's** report of 21/1/10 considered that the development involving minor alterations to a previously approved development would be acceptable in principle.

The report of 28/5/10 following the receipt of additional information noted that disputes over boundary lines are civil issues and cannot be dealt with through the planning system. The altered red line indicates that the original boundary wall was not built on the actual ownership boundary between the two properties but further into the property of No 20. The boundary line passing between the two houses does not, as indicated on the new drawing, pass in the centre of the laneway but at a split of 600 mm to No 22 and 860 mm to No 20. The drawings show that due to the new split of the access laneway that all the drainage for this development, according to the applicant is in fact in the ownership of the applicants.

The shed which has been constructed at the end of the garden encroaches onto the laneway which is not in the ownership of the applicants' and this is a matter for the Enforcement Section. The boundary wall between the two properties was re-instated by others, is not in line with the existing boundary wall on the site and is only 1.5 m high. It would be considered appropriate to re-instate the wall along its original position and to its original height.

When considering the application on purely planning considerations, the position of the extension is considered to be minor and the location of the window which is fixed and frosted is considered acceptable.

The **Drainage Division** report of 15/01/10 raised no objection to the development subject to conditions.

PLANNING AUTHORITY'S DECISION

The planning authority decided to grant permission for the development subject to two conditions requiring that the development be retained in accordance with plans and particulars and that the terms and conditions of the previous permission (6678/07) be fully complied with.

APPEAL SUBMISSIONS

3rd PARTY APPEAL

The following summarises the grounds of appeal: -

- Considerable departure from the terms of the permission granted under Reg Ref No 6678/07. The current application is significantly altered from the original.
- If the conditions attached to 6678/07 had been adhered to the development would be approximately 1m from the boundary allowing the end of terrace house to keep the side access it had. Due to the altered extension this access is almost extinguished. The effect on the adjacent landowners is enormous.
- The altered design of the development has resulted in damage to the wall dividing the passageway which has resulted in a serious erosion of the enjoyment of appellants' dwelling house and considerable expense to have it re-instated.
- The proximity of the two-storey extension has taken away sunlight/daylight which devalues the property.
- Condition No 5(v) of 6678/07 states that drainage should be within the final site boundary. The most recent drawings (May 4th) places the AJ's and the manhole on land to which the applicant's have no title. The AJ's are shown in the correct

position in the further information but the boundary is unrecognisable from the original Block Plan. Two AJ's have been placed on appellants' property in the passageway,

- The applicants' have built a shed out onto the rear access lane owned by Dublin City Council and extended the rear garden into the back lane.
- The developers have increased the size of the side elevation windows as well as the design and number.
- The extension of the plot of 20 Furry Park Road serves to reduce appellants' plot by a similar amount.

RESPONSES TO GROUNDS OF APPEAL

The Planning Authority

The reasoning on which the planning authority's decision is based is set out in the planning report, which deals with the issues raised and justifies the decision made.

First Party

- The extension referred to has the benefit of planning permission under Reg Ref 6678/07. The applicants' had no intent to circumvent the planning process as claimed by the appellants'. The application was made to retain the as-built alterations and is therefore valid.
- The side wall of the extension was constructed in accordance with the permission except that there was a difference of 300 mm where the wall was built in line with that of the existing house. The modest increase of 300 mm does not justify the overturning of the planning authority's decision. The difference between that constructed and originally permitted is minimal as regards detrimental impact on the amenity of the appellants'.
- The windows referred to are unopenable and fitted with obscure glazing and are located in the common side passages and accordingly there is no overlooking of the appellants' private amenity space.
- The drain referred to is a common drain that enters the property of No 20 at the rear manhole and exits the property at a manhole in the front garden to the combined foul and surface water drain. No 20 has always had a connection to this drain.
- The shed referred to does not form part of the retention application.
- The boundary shown is taken from a dimensioned Lease Map extracted from the original Deeds and that is the source of the drawn boundaries.

DEVELOPMENT PLAN

The operative development plan is the **Dublin City Development Plan 2005-2011**.

The site lies within an area zoned Z1 with an objective '*To protect, provide and improve residential amenities*'

Section 15.9.14 deals with Extensions and Alterations to Dwellings. It states that the design of residential extensions should have regard to the amenities of adjoining properties and in particular to the need for light and privacy. In addition the form of the existing building should be followed as closely as possible, and the development should integrate with the existing building through the use of similar windows and finishes.

The Plan states that applications for planning permission to extend dwellings will be granted provided the development

- has no adverse impact on the scale and character of the dwelling,
- has no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight.

ASSESSMENT

The applicants' in this case have deviated from the original permission (6678/07) which facilitated the extension of the dwelling. The current application seeks to regularise these changes, which include building the side wall of the extension in line with the gable wall of the house (as opposed to the set back of 300 mm originally proposed) and the repositioning of a window for the kitchen at ground floor level in the side wall of the extension.

I concur with the planning officer that the alterations are minor in nature and do not impact to any extent on the residential amenity of appellants' property to the east. The window is non-openable and fitted with opaque glass (Photograph No 7) and accordingly no overlooking issues arise with impacts on privacy. I do not consider that there is any justification for the Third Party's contention that the altered position of the side wall will give rise to additional overshadowing impacts resulting in a serious diminution of the amenities currently enjoyed by the property. I have no objection, therefore, to the retention of the alterations as proposed.

The other issues raised by the appellants' relate to disputes over boundary positions, encroachment etc. These are not planning considerations and in any event the Board has no jurisdiction to adjudicate upon conflicting claims of title, which are matters more appropriately advanced through the Courts.

Any issues arising with regard to non-compliance with the conditions of permissions granted are a matter for the planning authority. The Board has no mandate in this regard.

RECOMMENDATION

Having considered the contents of the application, the decision of the planning authority, the provisions of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission for the retention of the development be granted for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to the planning history relating to the site, the pattern of development in the area and the limited extent of the development, it is considered that the retention of the development would not seriously impact on the residential amenity of adjoining property and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Breda Gannon
Inspectorate
October 15th, 2010