



An
Bord
Pleanála

Inspector's Report

ABP-306300-20

Development	Demolition of shed and construction of a two storey flat roof extension and single storey flat roof extension to the rear
Location	27, Dean Swift Road, Ballygall, Dublin 11
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	4319/19
Applicant(s)	Heather Hawthorne and Neil Tanner.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Fiona Tyrell
Observer(s)	none
Date of Site Inspection	18 th March, 2020
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located on Dean Swift Road in Ballygall, a short distance to the west of Ballymun Road and DCU. The site is located in a development of two storey terraced houses and the house on the appeal site comprises a two storey mid terraced house with a stated floor area of 86 sq. metres. The design of house is double fronted with a plot width of c.8.85 metres.
- 1.2. The site has a rear garden of significant length measuring up to 30 metres and the width of the rear garden is c.8.75 metres. There is an existing shed in the rear garden that is located adjoining the boundary with No.25 Dean Swift Road. The house has not been previously extended to the rear.
- 1.3. It is noted that the adjoining terraced house to the south at No.29 Dean Swift Road is located at a slightly lower level and such that the floor level and roof line are at a lower level than the house on the appeal site. In terms of roof apex level this difference is c.350mm.
- 1.4. The stated area of the site is 373 sq. metres.

2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of the existing flat roofed shed located in the rear garden (c.14 sq. metres) and the and the construction of a two storey rear extension. The floor area of the proposed extension is stated to be 59 sq. metres and the development would result in the floor area at ground floor level increasing from 43 sq. metres to 78 sq. metres and at first floor level increasing from 43 sq. metres to 67 sq. metres. The overall floor area post re development would therefore be c.145 sq. metres.
- 2.2. The proposed two storey extension is indicated as having a depth of c.4.55 metres beyond the original rear building line of the house and there is a bay window proposed at ground floor level.
- 2.3. The extension is proposed to extend the full width of the site at ground floor level and at first floor, the extension is proposed to be set back by 2.58 metres from the

boundary with the adjoining property to the south, No.29 Dean Swift Road. The height of the two storey extension is indicated as being c.6.0 metres and would extend c.800mm above the height of the eaves of the existing house. The height of the ground floor extension is c.4.0 metres above ground level on the site and the flat roof element is surrounded by a high parapet.

- 2.4. There is proposed to be a high level south facing window in the first floor extension that would face No.29.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 7 no. conditions, the most significant of which are considered to be as follows:

- Condition No.2 requires that the development would be amended to reduce the height of the two storey element by 0.385 of a metre, that the first floor of the extension shall have a maximum depth of 4 metres from the rear building line of the house and that the first floor extension shall be set back from the shared boundary with the adjoining house to the north by a minimum of 0.6 metre for the first 1.5 metres behind the rear building line and by 2.7 metres for the remaining depth of the extension (2.5 metres).

Note that Condition No.2 refers to set back from the boundary with No.29 Dean Swift Road when this should rear No.25 Dean Swift Road.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer notes the location of the site, the objection received, relevant plan policy and the planning history in the surrounding area for similar forms of development to that proposed. Some concern regarding the potential impact on amenity of surrounding properties given the orientation of the terrace of houses where the site is located and the fact that the adjoining house to

the north (No.25) has not been extended is referenced. A grant of permission consistent with the notification of decision which issued is recommended.

3.2.2. Other Technical Reports

Drainage Division – No objection.

3.3. Prescribed Bodies

Irish Water – No report on file.

3.4. Third Party Observations

An observation was received from the resident of the house to the south (29 Dean Swift Road) stating that:

- No objection in principle but that existing residential amenity should be protected,
- That No.29 is at a lower level than the appeal site and that the development would have an overbearing visual impact.
- That the proposed two storey extension is c.1 metre higher than the lowest point of the eaves of the original house.
- That there is a south facing window proposed.
- That the potential impact on light and visual intrusion should be considered.

4.0 Planning History

There is no valid planning history relating to the appeal site. The following reference appears on the history maps but relates to an invalid appeal submission on the current case. Dublin City Council Ref. 4319/19; ABP Ref. ABP-306288-19.

The following applications relate to similar forms of development on surrounding sites:

19 Dean Swift Road

Dublin City Council Ref. WEB 1076/12 – Permission granted by the Planning authority for new first floor extension to the rear of existing terraced house at No.19 Dean Swift Road to the north of the appeal site. This permission was not the subject of appeal.

39 Dean Swift Road

Dublin City Council Ref. WEB1183/18; ABP Ref. ABP-302367-18 – Permission granted by the Planning Authority and decision upheld on appeal for the construction of a first floor extension above existing ground floor rear extension at this site to the immediate south west of the appeal site. It is noted that this appeal was considered under s.139 and related solely to Condition No.2 which required the removal of Condition No.2 as follows:

The first floor rear extension shall be relocated at least 1m away from the party boundary with No 37 Dean Swift Road. The internal layout shall be amended accordingly.

Reason: In the interests of orderly development and visual amenity

This condition was removed having regard to the existing rear extension at No.41 and the commencement of construction of a rear extension to No.37.

5.0 Policy Context

5.1. Development Plan

The appeal site is located on lands that are zoned Objective Z1 (Sustainable Residential Neighbourhoods) under the provisions of the Dublin City Development Plan, 2016-2022 with the stated objective '*to protect, provide and improve residential amenity*'.

Section 16.10.12 (Extensions and Alterations to Dwellings) and Appendix 17 (Guidelines for Residential Extensions) of the Plan are relevant to the consideration of the proposed development.

Relevant extracts from the Plan are appended to with this report for the Board's information.

5.2. **Natural Heritage Designations**

The site is not located within or close to any European sites.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The following is a summary of the main issues raised in the third party appeal:

- That there is an obligation on the Planning Authority to protect residential amenities as set out in its plan policies.
- That sun path modelling was required to demonstrate that there would not be significant impacts arising on adjoining properties at Nos. 25 and 29.
- That notwithstanding the reduction in height and depth required by Condition No.2, that the development would still have an overbearing impact on Nos.25 and 29.
- In particular the height of the ground floor element of the extension would be very dominant to No.29 to the south as it would be c.4.3 metres above the ground level at No.29.

6.2. **Applicant Response**

The following is a summary of the main issues raised in the first party response to the grounds of appeal:

- That most of the issues raised in the appeal had already been included in the submission made to the planning authority and reflected in Condition No.2 which reduced the height and depth of the extension.
- That the appellant's house at No.29 is due south of the appeal site.

- That a shadow analysis has been undertaken and is submitted with the response submission. This covers 08.00 to 17.00 hrs on 21st March.
- That the rear gardens of Nos.25-29 are orientated almost due west and so receive a significant level of direct sunlight over the majority of the gardens for the majority of the day.
- The analysis indicates that the rear garden of No.25 received over 50 percent direct sunlight on 21st March and that this figure increases to over 60 percent in the case of No.29.
- That the analysis undertaken indicates that there will be no reduction at all in the level of sunlight to the rear garden of No.29 between the hours of 08.00 and 17.00 on 21st March.
- The average reduction in sunlight to No.25 between the hours of 08.00 and 17.00 hrs is 5 percent.
- Both gardens (Nos.25 and 29) will continue to receive direct sunlight to over 50 percent of their rear garden for over 7 hours post development and are therefore in compliance with the requirements of the BRE Guidelines.
- That, as identified in the Planners Report, there is precedence in the general area for two storey extensions.
- That the relative positions of the proposed extension and Nos.25 and 29 are such that there is no potential for loss of daylight.
- That Condition No.2(d) of the decision of the Planning Authority requires that the high level window in the first floor extension to be fitted with obscure glazing. It is also 1.81 metres above floor level.
- That the issue of overbearing visual impact was taken into account by the Planning Authority and the planning officer report notes the presence of an extension to the rear of the appellant's property at No.29. The required set back to the boundary with No25 would mitigate an issues of overbearing visual impact.

6.3. Planning Authority Response

There is no record on file of a response to the third party appeal submission submitted by the resident of No.29 Dean Swift Road. .

6.4. Further Responses

The first party response to the third party grounds of appeal was referred to the Planning Authority and the Third Party for observations:

Third Party Appellant

The following issues raised in the response received from the third party appellant:

- That no convinced that the shadow analysis clearly indicates that there would be no adverse impact on No.25 Dean Swift Road.
- That the issue of overbearing has not been adequately addressed and the lower ground level in No.29 has not been taken into account.
- That the shadow path analysis undertaken does not address the rights to light issues for Nos. 25 and 29. The response makes no reference to the RIAI / Chartered Surveyors document '*Professional Standards – Rights to Light*'.

Planning Authority

The following is a summary of the main issues raised in the response received from the Planning Authority in response to the first party / Applicants response to the grounds of appeal:

- Attention is drawn to Condition No.2 attached by the Planning Authority.
- That the wording of this condition requires that the height of the two storey extension shall be reduced by 0.385 metre and the first floor level of the extension shall have a maximum depth beyond the original rear wall of the house of 4 metres.
- That condition No.2(c) requires that the first floor of the extension shall be set back from the northern boundary with the adjoining dwelling by a minimum of 0.6 metre for a depth of 1.5 metres beyond the original rear

wall / building line of the house on the appeal site and by a minimum of 2.7 metres for the remaining 2.5 metre depth of the extension. .

- It is highlighted in the submission that there is a typographical error in the wording of Condition No.2(c) and that this should refer to No.25 Dean Swift Road and not No. 29 as included in the condition.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of Development
- Design and Visual Impact
- Shadowing and Impact on Residential Amenity
- Other Issues
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The appeal site is located on lands that are zoned Objective Z1 (Sustainable Residential Neighbourhoods) under the provisions of the Dublin City Development Plan, 2016-2022 with the stated objective '*to protect, provide and improve residential amenity*'. In principle, an extension to an existing dwelling is acceptable in principle subject to compliance with the zoning objective and other relevant provisions of the development plan, in particular paragraph 16.10.12 and Appendix 17 relating to residential extensions.

7.2.2. As noted by the first party submission and highlighted in the Planners Report, there is precedence in the general area for two storey extensions. In particular I note the fact that the Planning Authority permitted a first floor extension to a mid terraced dwelling to the north of the current appeal site at No.19 Dean Swift Avenue (Dublin City Council Ref. WEB 1076/12) and that this house has the same east-west orientation as the current appeal site. It is also noted that the Board granted permission for a two storey extension to No.39 (ABP Ref. ABP-302367-18), albeit in

circumstances where the site is orientated north – south and where the properties on either side had ground floor rear extensions.

7.3. Design and Visual Impact

- 7.3.1. The scale of extension proposed is relatively significant for a mid terraced dwelling and extends to c.4.55 metres beyond the existing rear building line. I note that as part of the conditions attached to the Notification of decision issued by the Planning authority that the depth of the first floor element of the extension is restricted to 4.0 metres beyond the original rear building line. Given the east – west orientation of the site and the fact that there is a dwelling located to the north of the site (No.25) which has not been extended to the rear, it is considered appropriate that the depth of any first floor extension would be restricted.
- 7.3.2. The design of extension proposed is contemporary with flat roofs and parapets and a mixture of zinc, render and brick to the external finishes. The basic design concept and use of materials is considered to be acceptable.

7.4. Shadowing and Impact on Residential Amenity

- 7.4.1. The main issues raised in the third party submissions on file relate to the potential impact of the proposed development on residential amenity due to overshadowing, loss of light and visual intrusion / overbearing visual impact. The third party appellant in this case resides in No.29 Dean Swift Road which is immediately to the south of the appeal site. The relative orientations of the appellant's property and the appeal site are such that I consider that any impacts arising on daylight and sunlight to the appellants property would likely be very limited. This conclusion is supported by the results of the shadow analysis presented by the first party as part of the response to the third party appeal. This analysis focusses on compliance with the requirements of the BRE daylight and sunlight assessment and indicates that the rear garden of No.25 received over 50 percent direct sunlight on 21st March and that this figure increases to over 60 percent in the case of No.29. The analysis undertaken indicates that there will be no reduction at all in the level of sunlight to the rear garden of No.29 between the hours of 08.00 and 17.00 on 21st March and

that the average reduction in sunlight to No.25 between the hours of 08.00 and 17.00 hrs would be c. 5 percent.

7.4.2. The results of the assessment undertaken indicate to me that the requirements of the BRE Guidelines would be met in the proposed development and that, particularly in the case of the appellants property to the south of the appeal site, any impact on sunlight would be very limited. It is also noted that the sunlight assessment diagrams presented so not appear to indicate the first floor layout with the set back from the northern site boundary which was required by Condition No.2 of the decision of the Planning Authority and which are accepted by the first party and stated in the first party response submission to be '*...a reasonable concession to minimise the impact on their neighbour of the proposed extension*'. On the basis of the information presented, I consider that subject to the amendments as specified in Condition No.2 attached by the Planning Authority, the proposed development complies the requirements of the BRE Guidelines as they relate to sunlight and would not be such as to have a significant negative impact on either No.25 or 29 Dean Swift Road due to overshadowing and loss of sunlight.

7.4.3. With regard to **daylight**, given the relative orientations and locations of the appeal site and the appellants property, I do not see how there could be any impact on sunlight to habitable rooms in No.29. There is significantly more potential for loss of daylight to arise to No.25 given its position due north of the proposed extension and the fact that this property has not already been extended. No clear daylight assessment for this property (No.25) is presented however the amendments to the design and setting back of the first floor of the proposed extension from the shared northern boundary as required by Condition No.2c and the reduction in overall depth to 4.0 metres required by 2(b) would in my opinion significantly mitigate any negative impacts on daylight that might otherwise arise.

7.4.4. I note the reference in the response submission received from the third party appellant to a RIAI / Chartered Surveyors document '*Professional Standards – Rights to Light*' and it is contended that the submission of the first party makes no reference to this document. This document is noted, however it relates to the assessment of legal disputes between parties regarding right to light cases and is not in my opinion relevant to assessments undertaken as part of planning

applications. This interpretation is supported by Page 5 of the RIAI/ Surveyors document which states

The issues associated with daylight and sunlight in the planning system are a separate area and are not covered by this guidance note. For further information, see Building Research Establishments (BRE) publication BR209 Site Layout Planning for Daylight & Sunlight (current edition).

- 7.4.5. As set out above, I am satisfied that, subject to the further modifications to the proposed development required to comply with Condition No.2 attached to the development of the Planning Authority, that the proposed development would be consistent with the requirements of the BRE Guidelines and therefore consistent with the requirements of Paragraph 16.10.12 and Appendix 17 of the Dublin City Development Plan, 2016-2022.
- 7.4.6. The appellants also raise the issue of the visual impact of the proposed development and particularly the potential for the extension to result in a **visually obtrusive feature and to be visually overbearing** when viewed from their property. I note these concerns and the comments made with regard to the height of the single storey element of the proposed extension and the lower ground level on the appellant's property. From an inspection of Section A-A it would appear that the floor to ceiling height in the ground floor part of the extension closest to the appellants property is higher than that in the remainder of the ground floor extension (3.145 metres as against 2.785) and it is noted that there is a significant height of parapet to the edge of the ground floor extension. It would therefore appear to me that it would be possible to reduce the height of the ground floor part of the extension located closest to the appellants property by at least 350mm overall without significantly impacting on the layout or quality of ground floor accommodation, and it is recommended that this be required by condition. This change would reduce the height of the extension when measured on the site of No.29 to approximately 4.0 metres above ground level or c.3.650 above existing ground level on the appeal site.
- 7.4.7. In terms of **overbearing visual impact**, it is noted that the appellant's property already has a single storey rear extension / structure located on the northern boundary where it adjoins the appeal site. This existing structure is c.3.85 metres in length and would have the effect of significantly screening the extension when

viewed from No.29 and reducing the sense of bulk and scale. The ground floor of the proposed extension would extend only c.700mm beyond this existing extension and together with the proposed reduction in height of the single storey element of the extension, I consider that the presence of this existing extension to No.29 would result in no significant adverse impact in terms of overbearing visual impact arising.

7.4.8. To the north, the required set back to the boundary with No25 as required under condition No.2 and the reduction in depth of the extension to 4.0 metres would, in my opinion mitigate any issues of overbearing visual impact.

7.4.9. In terms of **overlooking**, there is proposed to be a high level window to the bedroom at first floor level that would face south towards the appellants property. This window has a cill height of c.1.81 metres above floor level and is set back c.2.6 metres from the boundary with No.29. Subject to a condition requiring that this window in the first floor extension to be fitted with obscure glazing, I do not consider that any issues of actual or perceived overlooking would arise.

7.5. Other Issues

7.5.1. The Drainage Division of the local authority state that there is no objection to the proposed development subject to conditions including that all surface waters be disposed of within the site. The proposals for surface water drainage via a soakpit in the large remaining rear garden are considered to be acceptable.

7.5.2. No new connection to the public water supply and foul drainage networks are proposed and therefore a connection agreement from Irish Water is not required.

7.5.3. A financial contribution in accordance with the provisions of the adopted s.48 development contribution scheme was attached by the Planning Authority. A new development contribution scheme was adopted by the council on 2nd March, 2020 to cover the 2020-2023 period. This scheme states that the new contributions will apply in respect of existing permissions granted before this date which have not yet commenced. Under section 11 of the adopted scheme the first 40 sq. metres of any residential development / extension are exempt with the balance charged at the appropriate rate per sq. metres of residential development. In the case of this appeal the new floor area is 59 sq. metres and so the 19 sq. metres above the 40 sq.

metre threshold should in my opinion be the subject of a contribution under the scheme. In the event of a grant of permission it is recommended that a general development contribution condition would be attached.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the residential zoning objective for the area and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development 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.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The first floor element of the proposed extension shall have a maximum depth of 4 metres from the rear wall of the original dwelling on the site.
 - (b) The first floor level of the permitted extension shall be set back from the northern boundary shared with the adjoining property at No.25 Dean Swift Road by a minimum of 600mm for a distance of 1.5 metres from the rear wall of the original dwelling and by a minimum of 2.5 metres for the remaining 2.5 metres of the permitted 4 metre deep first floor extension.
 - (c) The maximum height of the two storey extension shall be reduced by 0.385 metre to be a maximum of 5.615 metres above the existing ground level on site.
 - (d) The maximum height of the first floor element of the permitted extension where it adjoins the site boundaries to Nos.25 and 29 Dean Swift Avenue shall be reduced by 0.350 metre to be a maximum of 3.650 metres above the existing ground level on site.
 - (e) The window in the south facing elevation of the first floor level of the extension shall be fitted and thereafter permanently maintained with obscure glazing.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of [visual] [and residential] amenity.

3. Water supply and drainage arrangements, including the [attenuation and] disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health. Hours of construction.

4. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Stephen Kay
Planning Inspector

18th March 2020