



An
Bord
Pleanála

Inspector's Report ABP 308113-20

Development	Retention of a single storey extension to the rear of existing house.
Location	40 St Nessian's Terrace, Howth, Co. Dublin, D13 H98.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F20B/0009
Applicant	Eimear Magner & Paul Flood
Type of Application	Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	Third Party
Appellants	John and Siobhan Breslin
Observer(s)	None
Date of Site Inspection	3 rd December 2020
Inspector	Brendan Coyne

1.0 Site Location and Description

1.1. The site (0.02 ha) is located at the eastern end of a cul-de-sac in St. Nesson's Terrace in Howth, on its northern side. The site contains a single storey 2-bedroom cottage (No. 40). The roof profile of the dwelling is pitched, and its front elevation finishes comprise pebble dash with brick surrounds around window and door openings. The dwelling contains a single storey extension to the rear (north) which is the subject of the current appeal. This extension extends along the western boundary and provides a kitchen area and utility room. The utility room provides access to an external raised decking area with an L-shaped stairwell extending in a northerly direction, leading to the sloped garden to the rear of the dwelling. The roof profile of the extension is mono-pitched, and its elevation finishes are rendered. The side boundaries of the site to the rear of the dwelling comprise walls c. 2m high. The rear garden slopes downwards in a northerly direction. The site is bound by Tuckett's Lane to the rear / north of the site, which provides primary access to the dwelling. The main entrance door to the front (south) of the cottage is no longer used as the primary access, as it opens into a bedroom within the dwelling. The site is located in an Architectural Conservation Area.

2.0 Proposed Development

2.1. Permission sought for the RETENTION of the following;

- Single storey extension (8.1 sq.m.) to the rear of the dwelling.
- Associated site works.

3.0 Planning Authority Decision

3.1. Decision

Fingal County Council GRANTED permission for the retention of the development subject to 4 no. Conditions. Noted Condition includes:

Condition No. 3 The landing area serving the external staircase shall not be used as a balcony or deck area.

Condition No. 4 The developer shall pay a financial contribution of €796 sq.m.

3.2. Planning Authority Reports

3.2.1. *Planning Report*

3.2.2. First Report (11th March 2020)

- An objection received raised concerns regarding the red line of the application site.
- The dwelling is located within an Architectural Conservation Area.
- The Conservation Officer notes that the original chimney stack appears to have been taken down and repositioned slightly off-centre to the north of its original location.
- The proposal would not have an overbearing impact on neighbouring property.
- Overlooking and overshadowing of neighbouring property would not occur.

Further Information was sought regarding the following:

1. Applicants requested to demonstrate that the lands within the red line of the application site are within the applicants' ownership.
2. Applicants requested to clarify if works have been undertaken to the chimney on the main dwelling and, if undertaken, provide revised plans accordingly.

Further Information was received on the 08th April 2020.

3.2.3. Second Report (17th June 2020)

- The documentation submitted does not demonstrate the lands within the red line of the application site are within the applicants' ownership.
- The applicants confirm that the chimney was reconstructed and reinstated to its original form and location, as it was in a bad state of repair.
- The applicants acknowledge a drafting error in the omission of the chimney on the rear elevation drawing submitted.
- The applicants refer to supporting elevation plans which have not been submitted.

Clarification of Further information was sought regarding the following:

1. Applicants request to clarify that the lands within the red line of the application site are within the applicants' ownership.
2. Submit elevation plans, as referred to by the Applicants in the further information response.

Clarification of Further Information received on the 17th July 2020.

3.2.4. Third Report (12th August 2020)

- Documentation submitted demonstrates that all development is located within the red line of the application site.
- Plan and photographs submitted show the position of the chimney, to the satisfaction of the Conservation Officer.

3.2.5. **Other Technical Reports**

Conservation Officer: No objections.

Water Services Section: No objections.

4.0 **Planning History**

Subject Site:

P.A. Ref. FS5/039/19 Fingal County Council issued on the 18th Oct 2019 a Declaration, pursuant to Section 5 of the Planning and Development Act 2000 (as amended), to the effect that the construction of a single storey extension to the rear of the existing house is not considered to be exempted development under the Planning and Development Regulations 2001 (as amended) and therefore, does require planning permission.

Adjoining Site to the west - No. 39 St. Nessan's Terrace:

P.A. Ref. F17B/0171 Permission GRANTED in 2017 for the construction of a rear extension to lower ground floor level, rear elevational changes to upper ground floor level and all associated site works.

P.A. Ref. F16A/0399 Permission GRANTED in 2017 for (1) the removal of the existing pedestrian gate opening in the boundary wall to the north of the property at Tuckett's Lane and replacement with a new setback section of boundary wall to match existing; (2) modifications to the existing boundary wall to the east of the existing pedestrian gate to facilitate a new vehicular entrance and parking area at the north of the property accessed from Tuckett's Lane, including provision of new gates; (3) all associated site works.

P.A. Ref. F08B/0651 Permission REFUSED in 2017 for the construction of a balcony (11.56 sq.m.) to the rear of the existing property and the opening/demolishing to ground level of 1nr existing window to form an opening to service the proposed balcony.

P.A. Ref. F00B/0482 Permission GRANTED in 2000 for a two-storey extension to the rear and velux rooflights in the roof of the cottage.

P.A. Ref. F00B/0115 Permission REFUSED in 2000 for a two-storey extension to the rear and velux rooflights in the roof of the cottage.

5.0 Policy and Context

Fingal County Development Plan 2017 – 2023 is the statutory plan for the area. The following provisions are considered relevant:

Zoning: The site is zoned objective 'RS - Residential' with the objective 'to provide for residential development and protect and improve residential amenity'.

Specific Objective The site is located within St. Nessian's Terrace Architectural Conservation Area, as detailed in Table 10.1.

Objective PM46 Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

Objective DMS30 Ensure all new residential units comply with the recommendations of *Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice* (B.R.209, 2011) and *B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting* or other updated relevant documents.

Section 12.4 Extensions to Dwellings – Development Management Standards

Objective DMS42 Encourage more innovative design approaches for domestic extensions.

Objective DMS85 Ensure private open spaces for all residential unit types are not unduly overshadowed.

Section 12.2 Common Principles for all Planning Applications

Objective DMS157 Ensure that any new development or alteration of a building within or adjoining an ACA positively enhances the character of the area and is appropriate in terms of the proposed design, including: scale, mass, height, proportions, density, layout, materials, plot ratio, and building lines.

Objective DMS158 All planning applications for works in an Architectural Conservation Area shall have regard to the information outlined in Table 12.11

Table 12.11 Direction for Proposed Development within Architectural Conservation Areas

5.1. National Guidelines

Development Management Guidelines (2007)

5.2. Natural Heritage Designations

The site is located 0.3km to the south-west of the Howth Head SAC (Site Code: 000202).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third-party appeal was received from Gráinne Mallon, Town Planning Consultant, representing the appellants John and Siobhan Breslin, against the decision made by the Planning Authority to grant permission for the retention of the development. The appellants reside at adjoining dwelling No. 39 St. Nessan's Terrace. The main grounds of appeal are summarised under the headings below;

6.1.2. *Unauthorised development*

- Development works were carried out without the benefit of planning permission including the demolition of the side boundary wall adjoining dwelling No. 39 which the appellants state is within their remit, and the lowering of the original ground level of the site.

6.1.3. *Encroachment of neighbouring property*

- Development works altered and interfered with the roof of the adjoining dwelling No. 39. This caused the discharge of surface water from the applicant's roof and gutters causing flooding of the appellants house and internal areas on a number of occasions.
- The gutters and roof of the development seeking retention permission are constructed outside the site boundary.
- The Planning Authority should not have granted permission for development which oversails adjoining property.

6.1.4. *Overlooking*

- Serious concern with regards overlooking from the access stairs and balcony / landing area.

- The occupants of No. 40 have a clear view of the private amenity space and ground floor bedroom of adjoining dwelling No. 39, which is located 4 metres from the stairs.
- The existing boundary wall is 2m high and cannot be increased in height without the benefit of planning permission.
- The floor plan of house No. 40 shows the original front door into St. Nesson's Terrace will now give access to a bedroom, so the stairwell to the rear of the dwelling will be the primary access to the dwelling.
- Photographs submitted showing the stairwell as viewed from the rear garden and ground floor bedroom window of adjoining dwelling No. 39.
- Notwithstanding the Condition imposed by the Planning Authority restricting the use of the external landing area as a balcony, overlooking of adjoining house No. 39 remains an issue.
- Consideration should have been given to a redesign of the steps so as to ensure overlooking would not occur.

6.1.5. ***Impact on the Architectural Conservation Area***

- The development does not comply with Objective DMS157 of the Fingal County Development Plan.
- The excessive height, scale and massing of the development, with its mono-pitched roof is incongruous and out of character with developments in the Architectural Conservation Area.
- Any proposed development should respect or enhance the area's special character.

6.1.6. Supporting documentation lodged with the appeal includes the following;

- Copy of original objection and further observation submitted to the Planning Authority, prepared by Gráinne Mallon, Town Planning Consultant on behalf of John and Siobhan Breslin.
- Photographs showing the stairwell as viewed from the rear garden and ground floor bedroom window of adjoining dwelling No. 39.

- Plans and Drawings of the development seeking retention permission.

6.2. Applicant Response

6.2.1. The response received from O'Neill Town Planning Consultant representing the Applicant, is as follows;

- The roof and gutter of the extension does not oversail the appellants property.
- Any works done to the gutter was done after months of negotiation between the applicants' engineer and the appellants.
- In order to prevent overlooking the applicants have proposed the erection of an obscure 1.8m high screen to the landing area of the stairwell.
- Submission includes an image detailing the proposed 1.8m high screen to the landing area of the stairwell, along its western side.
- The applicants have erected 3 no. bamboo plants to prevent overlooking of the appellant's side window. Photograph submitted demonstrating same.
- The landing area is not a balcony and was never intended to be.
- The appellants large first floor rear window allows for far more overlooking of adjoining property than any of the other houses in the terrace.
- Given the orientation and topography of the site and the width of the terraced houses, it is impossible to prevent overlooking of private amenity space of neighbouring property.
- The small extension to the rear of the property, while within an Architectural Conservation Area, will not affect the character or the vernacular architecture of the streetscape.

6.3. Planning Authority Response

6.3.1. The Planning Authority response is as follows;

- The development seeking retention permission was assessed having regard to the Development Plan zoning objective as well as the impact on adjoining neighbours

and the character of the area, gives its location within an Architectural Conservation Area.

- The Planning Authority contend that the issue regarding the boundary wall is a civil issue and not a matter to be addressed as part of the planning process.
- In the event that the Planning Authority's decision is upheld, the Planning Authority request that Condition No. 4 is included in An Bord Pleanála's determination.

6.4. **Observations**

None received

7.0 **Assessment**

7.1. I consider the main issues in determining this appeal are as follows:

- Interference with and encroachment of neighbouring property.
- Overlooking
- St. Nessan's Architectural Conservation Area

These are addressed under the headings below.

7.2. **Interference with and encroachment of neighbouring property**

7.2.1. The third-party appellants object to the development seeking retention permission on the grounds that the roof and gutter of the extension oversail their adjoining property, No. 39 St. Nessan's Terrace. The appellants state that works carried out altered and interfered with the roof of the adjoining dwelling No. 39, causing the discharge of surface water and flooding to the appellants dwelling on a number of occasions. The appellants also state that development works were carried out without the benefit of planning permission including the lowering of the original ground level of the site and the demolition of the boundary wall shared with adjoining dwelling No. 39.

- 7.2.2. The Planning Authority addressed the issue of development outside the red line of the application site and sought both further information and clarification of further information from the applicants addressing this issue. The documentation submitted in response to clarification of further information includes a Land Registry Folio Map and Folio Register of Ownership of Leasehold Interest. This details that the appeal site and development thereon is within the ownership of the applicants.
- 7.2.3. In consideration of the issue of encroachment of and interference with adjoining dwelling No. 39 St. Nessan's Terrace, Section 5.13 of the Development Management Guidelines (2007) refers to 'Issues relating to title to land' and states that the planning system is not designed as a mechanism for resolving disputes about title to or rights over land and that these are ultimately matters for resolution in the Courts. The Guidelines advise that where there is doubt in relation to the legal title of the applicant, the Planning Authority may decide to grant permission, however a grant of permission is the subject of Section 34(13) of the Planning and Development Act 2000 (as amended). Section 34(13) of the Planning and Development Act states that 'a person is not entitled solely by reason of permission to carry out any development'.
- 7.2.4. Having regard to the above and in the absence of evidence to demonstrate that the development seeking retention permission encroaches or has interfered with adjoining dwelling No. 39, I consider it inappropriate to refuse permission for the development seeking retention permission on these grounds.
- 7.2.5. In consideration of the appellants objection to the development seeking retention permission on the grounds that unauthorised development has occurred on the site, including the lowering of the original ground level to the rear of the dwelling and the demolition of the side boundary wall shared with the adjoining dwelling No. 39, I consider that any unauthorised development at the site should be dealt with by enforcement proceedings, which is a function of the Council. I recommend, therefore, that this ground of appeal should not be upheld.

7.3. Overlooking

- 7.3.1. The third-party appellants object to the development seeking retention permission on the grounds that the occupants of the subject dwelling No. 40 have a clear view from the stairwell landing to the rear of the dwelling of the private amenity space and ground floor bedroom to the rear of adjoining dwelling No. 39. The ground floor bedroom of adjoining dwelling No. 39 has a corner type window open at its north-eastern corner and is located c. 4m from the aforementioned stairwell landing. The appellants express concern that the development seeking retention permission has a serious impact on their residential amenity by way of overlooking, causing a devaluation of their property.
- 7.3.2. The Planning Authority in its assessment consider overlooking not to be an issue.
- 7.3.3. The single storey extension seeking retention permission extends along the western boundary for a length of 7.3m. There are no window or door opens on the western side elevation or rear / northern elevations of this extension. Therefore, overlooking from this extension of adjoining dwelling No. 39 does not occur.
- 7.3.4. The external stairwell to the rear of the dwelling extends a further 3m to the north of the extension seeking retention permission. This stairwell is L-shaped with a landing area at its corner return. The stairwell maintains a setback of 2.4m from the western side boundary shared with adjoining dwelling No. 39. The stairwell has a wall c. 1m high along its western side, with tall bamboo planted along the inside of this wall.
- 7.3.5. In response to the third-party grounds of appeal and concerns raised regarding overlooking, the applicants propose the erection of an obscure 1.8m high screen to the landing area of the stairwell. The Applicants have submitted images showing both the existing bamboo screening and a proposed 1.8m high wooden screen along the western side of the stairwell. It is my view that the provision of such a screen would prevent overlooking of the private amenity space and ground floor bedroom to the rear of adjoining dwelling No. 39, thereby allaying this issue of concern by the appellants. This issue can be dealt with by way of Condition, in the event of a grant of permission. On this basis, I recommend that this ground of appeal should not be upheld.

7.4. St. Nessian's Architectural Conservation Area

- 7.4.1. The appellants object to the development seeking retention permission on the grounds that the height, scale and massing of the development seeking retention permission is incongruous and out of character with development in the St. Nessian's Architectural Conservation Area. The appellants put forward that the development does not comply with Objective DMS157 of the Fingal County Development Plan.
- 7.5. As detailed above, the single storey rear extension has a total depth of 7.3m and a width of 2.4m. The roof profile of the extension is mono-pitched with an eave height of c. 4.2m along its western side rising to 5.8m along its western side. The ridge height of the extension is set down c. 0.8m below the roof ridge line of the main dwelling. Its elevation finishes are rendered.
- 7.6. The site is located within St. Nessian's Architectural Conservation Area and the lands are subject to the zoning objective 'RS - Residential' which seeks 'to provide for residential development and protect and improve residential amenity'. The objective of an Architectural Conservation Area designation is to protect the special character of an area through the careful control and positive management of change of the built environment. The Fingal County Council Statement of Character for St. Nessian's Terrace (and St. Peter's Terrace, Seaview Terrace & The Haggard, Howth) describes the special character of St. Nessian's Architectural Conservation Area as one of low-rise, small-scale, early 20th century terraced cottages which creates a distinctive homogenous vernacular character that sets this area apart from the rest of Howth village. The Statement of Character for St. Nessian's Terrace sets out requirements regarding extensions to dwelling requiring that extensions in general should be to the rear of property and should not extend above the existing ridge line. Their design should be subsidiary to the main building, of an appropriate scale, and use appropriate materials. I note that in response to clarification of further information, the Conservation Officer of Fingal County Council outlines no objections to the development seeking retention permission.
- 7.7. Having reviewed the drawings submitted and further to site inspection, it is my view that the scale, height and extent of the development seeking retention permission is modest and would not detract from the character or visual amenity of St. Nessian's Architectural Conservation Area. The development seeking retention permission

would not be contrary to Objective DMS157 of the Fingal County Development Plan. On this basis, I recommend that this ground of appeal should not be upheld.

7.8. Screening for Appropriate Assessment

- 7.8.1. Having regard to the nature and modest scale of the development seeking retention permission, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any European site, no Appropriate Assessment issues arise and it is not considered that the development to be retained would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that permission for retention be granted subject to conditions, for the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to the scale, form and design of the development seeking retention permission, it is considered that, subject to compliance with the Conditions set out below, the development to be retained would not adversely impact on the residential amenity of neighbouring property or detract from the character and visual amenity of the surrounding Architectural Conservation Area. The proposal would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Within three months from the date of this order, the developer shall erect a 1.8m high screen of durable and non-transparent material along the western side of the stairs to the rear of the dwelling. Details of this screen wall shall be submitted to, and agreed in writing with, the Planning Authority.</p> <p>Reason: To prevent overlooking of adjoining residential property.</p>
3.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by</p>

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 within three months from the date of this order, 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 permissions for retention of development.

Brendan Coyne
Planning Inspector

07th December 2020