

An Bord Pleanála



INSPECTOR'S REPORT

PL 29S 246055

DEVELOPMENT: Permission for Retention of a store/office extension at first floor level to the rear of the existing building.

LOCATION: No. 77 Terenure Road North, Dublin 6W.

PLANNING APPLICATION

Planning Authority: Dublin City Council
P. A. Reg. Ref: 3906/15
Applicant: Sorcha Finnegan and Damien Kelly
Decision: Grant Permission for Retention.

APPEALS

Party Appellant: Weihui Li
Type of Appeal Third Party against Grant of Permission for Retention.

Date of Inspection: 4th March, 2016.

Inspector Jane Dennehy.

1. **SITE LOCATION AND DESCRIPTION**

The site is that of a two storey nineteenth century house that was previously part of an integrated property in the ownership of a Jewish Community incorporating a synagogue at the rear. The synagogue is in current use whereas the main building in which the applicants' solicitors practice is based is in office use in entirety. Rathmore Villas, a short cul de sac adjacent to the synagogue along which there are terraced dwellings adjoins the southern boundary. Access to off street parking in the former front garden is onto the Rathmore Road frontage and Terenure Road North is along the western boundary.

A two storey house, formerly the garda station which was unoccupied at the time of the inspection adjoins the northern boundary and there were incomplete renovation and alteration works at the property at the time of inspection which was unannounced. There are windows and doors on the southern side elevation facing towards the northern boundary of the appeal site. The area is characterised primarily by mixed use residential commercial and retail development.

2. **PLANNING HISTORY:**

- 2.1 **P. A. Reg. Ref. 0066/00:** Permission was granted for the off street parking to the front of the property with access from Rathmore Villas.

3. **DEVELOPMENT PLAN.**

- 3.1 The operative development plan is the Dublin City Development Plan, 2011-2017 according to which the site location is subject to the zoning objective: Z1: *"To protect, provide and improve residential amenities."*

4. **THE PLANNING APPLICATION and DECISION.**

- 4.1 The application lodged with the planning authority which arose further to enforcement investigations by the planning authority indicates proposals for permission for retention of a rear, store/office extension at the northern and eastern end at first floor level within the property the stated floor area of which is 8.27 square metres. There is a window in the rear, eastern elevation and the original window in the original rear wall at first floor level is blocked up.
- 4.2 The internal technical reports available indicated no objection to the proposed development.

- 4.3 An Objection was received from the appellant party in which the issues raised relate to overhanging the adjoining property, infill of void space and adverse impact on views and daylight.
- 4.4 By Order dated, 16th December, 2015 the planning authority decided to Grant permission for retention subject to conditions of a standard nature.

5. THE THIRD PARTY APPEAL.

- 5.1 An appeal was received from Weihui Li owner of the adjoining property at No 75 Terenure Road North on 20th January, 2016 along with a copy of the objection submitted at application stage. According to the appellant:
- The extension is oversized and overlooks the dining and kitchen area at No 75 and directly into the first floor bedroom and garden. This adversely affects residential amenity at No 75.
 - The conversion to a commercial building is out of character with the streetscape, the extension is out of place and the proposer has no open space.

6. RESPONSE TO THE APPEAL BY THE APPLICANT.

- 6.1 A submission was received from their applicants own their own behalf on 18th February, 2016. Attached is a report on boundary conditions prepared by Paul Corrigan Associates.

According to the submission:

- The appellant purchased No 75 Terenure Road North in March, 2014, commenced renovations but left the property in an unfinished state in November 2014 and in the course of Circuit Court legal proceedings between the parties it has been confirmed that the appellant has never resided at the property.
- The works at the appellant party's property has been disruptive to business and has caused rodent issues.
- With regard to the claim as to encroachment the appoint of Paul Corrigan to conduct an investigation was agreed between the parties. According to his report the methodology entailed GTS to establish the position of the boundary enabling accurate measurement and digital analysis by scanning and overlay of the map by GTS. The boundary is established as being the centre of an 18" party wall. The exterior of the wall of the extension is on

the centre of the party wall and this concurs with Deed Map boundary details.

- The application for permission for retention was made further to the complaint from the appellant as to unauthorised development. The decision of An Bord Pleanála will be accepted.
- It is not accepted that the window is oversized or provides a view to the bedroom or kitchen dining area. There is no additional overlooking as a window in the original rear extension provided for the same view over the rear garden of No 75 looked over the rear.
- No 75 having formerly been occupied by the Eastern Health Board and the Garda has not been in residential use for over forty years.
- The claims made in the appeal are false, misleading and incorrect.

7. FURTHER SUBMISSION OF THE APPELLANT.

7.1 A Submission was received from the appellant on 10th March, 2016 the contents of which are outlined below:

- The appellant is residing in rented accommodation while renovation works are carried out. No 75 Terenure Road North is the appellant's principle residence.
- The applicant has not made complaints and no rodent issue can arise due to a fire break creating seal between the two houses having been carried out.
- The appellant has lodged a complaint against the findings of the survey by Paul Corrigan with the Society of Chartered Surveyors
- The kitchen and dining area extends beyond the rear of no 77. The new window at No 77 is 3.5 metres closer giving a good view into the kitchen
- The bedroom is in a two storey annex and the window looked into side annex into the bedroom.
- The view into the garden is 3.5 metres closer so it is not comparable to the views in the streetscape in the late 1970s.
- The streetscape at the front of No 77 has totally changed since the 1970s. Parking has been added which along with the office extension results in 100 per cent development and no open space

to the rear or front on the site. This is overdevelopment and impinges on the residential amenities of No 75 Terenure Road.

- No false or misleading allegations have been made.

8. **RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY.**

8.1 There is no submission from the planning authority on file.

9. **EVALUATION**

9.1 Matters relating to encroachment on adjoining property are central to the dispute between the parties. The observations and the survey and analysis report prepared by Paul Corrigan included with the appeal. However, it should be borne in mind that ownership and encroachment matters do not fall within the planning remit and that the legal system can be referred to for resolution of the matter.

9.2 The main planning issues considered central to the determination of a decision which relate primarily to residential amenity and discussed below are that of:

- Visual impact,
- Overlooking and,
- Overdevelopment.

9.3 **Visual Impact.**

The development comprises a small infill to the north side rear of the existing building whereby space over the ground floor at first floor level is filled in as far as the side boundary and into the rear. It is not accepted that the addition of the extension results in undue visual impact in terms of significant diminution of the residential amenities of the adjoining property at No 75.

9.4 **Overlooking:**

It is agreed with the appellant that the impact of the proposed new window differs from that of the original rear elevation window. It has been boarded in to facilitate the construction of the extension. Therefore, the contention made on behalf of the applicants that there is no difference in impact between the original window and proposed window is not accepted. The larger and wider ope size and the elimination of the setback position of the existing window does result in some change in the relationship and potential for overlooking of the adjoining property. However the degree to which there is change in

impact is not of major significance. Due the perpendicular position of this window to the side elevation of the property at No 75 and limited visual access to the rear garden of that property across the roof of the synagogue and it is considered that the proposed window is not seriously injurious to residential amenity and can be accepted. Should there be some concern there is the option for a requirement for it to be fitted, and or obscure glazed but these measures are considered inessential.

9.5 Overdevelopment.

The infill extension at first floor level would result in small increase in total floor area and a minor change to the plot ratio of development on the site. There is no rear open space in that the synagogue abuts the house and appears to formerly have been interconnected. The use of the front garden area for off street parking is authorised development and is compatible with the commercial use of the house. The proposed development by itself and in conjunction with the off street parking to the front does not amount to overdevelopment that is negative in impact on the residential amenities of the adjoining property or the amenities of the area.

It is not considered appropriate to consider the merits of the current situation at No 75 with regard to incomplete renovation and alteration works and as to whether the appellant who is the owner of the property is resident at the property. However it is appropriate to have regard to the zoning objective which is for the protection and enhancement of residential amenities notwithstanding the former non-residential uses of the past forty years.

9.6 Appropriate Assessment.

Having regard to the nature and scale of the proposed development and, the nature of the receiving environment and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on European sites.

10. CONCLUSION AND RECOMMENDATION

- 10.1 In view of the foregoing, it is recommended that the planning authority decision to grant permission for retention be upheld and the appeal rejected. A draft order is set out overleaf.

DECISION

Grant Permission for Retention on the basis of the reasons and considerations set out below:

REASONS AND CONSIDERATIONS.

Having regard to the location and the limited scale and size of the proposed first floor extension as well as the position of the window in the rear elevation which is perpendicular to the side elevation of the adjoining property, it is considered that the proposed development is not excessive in mass and overbearing on the adjoining property, does not give rise to overlooking and does not constitute overdevelopment of the site. As result the proposed development would not be seriously injurious to residential amenity or the amenities and character of streetscape in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS.

1. The development shall be 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

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

**Jane Dennehy,
Senior Planning Inspector.
1st April, 2016.**