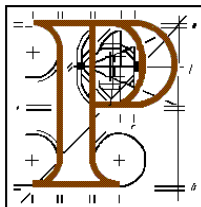


An Bord Pleanála



Inspector's Report

Site Address: 35 Dodderview Cottages, Ballsbridge, Dublin 4.

Proposal: Demolition of extension to rear and erect two storey and single storey extensions to rear.

Planning Application

Planning Authority: Dublin City Council

Planning Authority Reg. Ref.: WEB1399/15

Applicants: David Kelly

Type of Application: Permission

Planning Authority Decision: Grant

Planning Appeal

Appellant: David Kelly

Type of Appeal: 1st party -v- condition

Observers: None

Date of Site Inspection: 3rd June 2016

Inspector: G. Ryan

1.0 SITE

- 1.1 The subject site is located in Ballsbridge in the inner southeast suburbs of Dublin City. Dodderview Cottages is a scheme of terraced two storey and single storey houses, and is similar in style to a number of other schemes in the area such as at Stella Gardens (Irishtown) and St. Patrick's Villas (Ringsend). It is my understanding that these schemes may have their origins in the old Pembroke Estate / Pembroke Township era.
- 1.2 The subject property is a mid-terrace house, originally single storey, with single storey and first floor extension elements to the rear. The first floor element is located within a 'box dormer' structure and allows for the provision of 2 bedrooms at first floor level with windows to the rear. The stated site area is 79m².

2.0 PROPOSAL

2.1 SCHEME OVERVIEW

- 2.1.1 It is proposed to replace the ground and first floor extension elements to the rear with new ground and first floor extension elements. The 'yard' to the rear would be flipped onto the opposite boundary, and the wall of the first floor element extended toward the rear (southeast) of the site by around 2m. It is proposed to reconfigure the first floor accommodation to provide one bedroom at the front of the building, lit by 2 rooflights, and one at the rear.
- 2.1.2 The proposed development would increase the floor area of the house from 87m² to 97m², as per the application form.

2.2 ACCOMPANYING DOCUMENTATION

- 2.2.1 A cover letter from the applicant's architect provides a background for the scheme and incorporates much of the content replicated in the appeal, summarised at 7.0 below.
- 2.2.2 The application is accompanied by shadow modelling.

3.0 SUMMARY OF REPORTS TO THE PLANNING AUTHORITY

3.1 DEPARTMENTAL REPORTS

3.1.1 Drainage Division

- 3.1.2 No objections subject to conditions.

3.2 REPRESENTATIONS

Objections were submitted from the following parties.

- Sheila Thornton of No.40 (directly beyond the subject site to the southeast),
- Pdraig Murray on behalf of Nuala Davis of No.36 (directly to the north of the subject site)

The matters raised in these objections are summarised by the planning officer as follows.

- Visually obtrusive
- Rear wall 2 metres closer to boundary with No.40
- Proposed extension will overshadow in the late morning, noon.
- Moving the rear yard will result in loss of sunshine to No.36
- No.40 (house to rear) is not drawn on the drawings
- Separation distance between application site and No.40 will be less than 10 metres.

3.3 PLANNING OFFICERS REPORT

- 3.3.1 The proposed dormer extension will extend 2 metres beyond the original rear wall of the dwelling however it will not provide substantially more accommodation to the occupants of the dwelling.
- 3.3.2 Given the small size of the site and the size of the proposed first floor dormer it is considered that it will be visually obtrusive on the adjoining property no. 36. The proposed dormer extension should be omitted due to its impact on the residential amenities of adjoining properties.
- 3.3.3 The proposed alterations at ground floor level are considered reasonable.

4.0 PLANNING AUTHORITY DECISION

The planning authority decided to grant permission subject to 8 conditions. The only condition of note is Condition 2, which is the subject of this first party appeal. It is quoted below in its entirety

- 2 *The proposed dormer extension shall be omitted from the proposed development.*

Reason: In the interest of residential amenity.

5.0 HISTORY

5.1 ON THE SUBJECT SITE

PA Ref. 2623/83 Permission granted in 1984 to retain a dormer extension to the rear.

5.2 SIMILAR DEVELOPMENTS IN THE WIDER AREA

5.2.1 Stella Gardens

This is area of Irishtown around 1km north of the subject site, also part of the former Pembroke Estate. It includes terraced single storey houses that are outwardly identical to those at Dodderview Cottages.

PL 29S.245635 (PA Ref. 3374/15) Permission granted by the planning authority and granted on appeal by the board for a two storey extension to rear and two Velux windows to the front of a dwelling at 89 Veronica Terrace. I note that Condition 2(b) of the board's decision required that "The rear extension at first floor level shall project a maximum of three metres beyond the original rear building line of the dwelling."

PA Ref. WEB/1089/11 Permission granted by the Planning Authority for a two storey extension to the rear of No.76 Magdalen Terrace, a single storey dwelling. The development also comprised two small conservation type roof lights in the front roof slope. It is stated in the report of the planning officer that the depth of the first floor extension is c. 3 metres however the Planning Officer Report in respect of 1089/11 states that the projection beyond the original rear building line of the dwelling is 2 metres.

PA Ref. WEB/1020/12 Permission Granted by the Planning Authority for a two storey extension to the rear of No. 77 Magdalen Terrace. It is also stated in the report of the Planning Officer on this application as having a depth of c. 3 metres at first floor level.

It is evident from the description in the planners reports the above two applications (1020/12 and 1089/11) were for a single bedroom and bathroom at first floor level. The roof lights served the bathroom / void to living accommodation below rather than bedroom accommodation.

6.0 POLICY

6.1 DUBLIN CITY DEVELOPMENT PLAN 2011-2017

6.1.1 Zoning and conservation

The site is zoned 'Z2 - To protect and/or improve the amenities of residential conservation areas.'

Section 17.10.8 references development in Conservation Areas, as does Appendix 10.

6.1.2 Extensions

Section 17.9.8 deals with 'Extensions and Alterations to Dwellings' and states the following

The design of residential extensions should have regard to the amenities of adjoining properties and in particular 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 finishes and windows.

Applications for planning permission to extend dwellings will be granted provided that the proposed 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*

Appendix 25 of the plan consists of 'Guidelines for Residential Extensions'. Some excerpts of note are as follows.

In cases where the backs of dwellings face each other or where the side of one dwelling faces the rear of a neighbouring property, a certain degree of separation is required to avoid any overbearing effect of one dwelling upon the other. With the emphasis on increased residential densities and the consequent incorporation of a variety of unit types and sizes in schemes, the requirement for 22-metre separation in such cases may no longer be applicable in all instances. The acceptable reduction of such

distances, however, requires a high standard of building design and layout particularly having regard to the height and interrelationship between buildings, the use and aspect of rooms and relative floor levels. The exact distances applicable in such cases will be determined on a case-by-case basis having regard to the above criteria and other relevant development plan standards.

The planning system does not give neighbours “a right to a view” and does not always prevent people’s view from being blocked. However, extensions should be designed so as not to dominate or appear overbearing when viewed from adjoining properties.

Large single or two storey rear extensions to semi-detached or terraced dwellings can, if they project too far from the main rear elevation, result in a loss of daylight to neighbouring houses. Furthermore, depending on orientation, such extensions can have a serious impact on the amount of sunlight received by adjoining properties.

Section 11 covers ‘Roof Extensions’. Figure 8 indicates that ‘box dormers’ are not acceptable, whereas ‘floating dormers’ are.

6.1.3 Private Open Space and Development Standards

Section 17.9.1 sets out Residential Quality Standards and requires that a standard of 15sq.m of private open space per bedspace will normally be applied. A single bedroom represents one bedspace and a double bedroom represents two bedspaces.

It goes on to state that in relation to proposals for house(s) within the inner city, a standard of 5-8sq.m of private open space per bedspace will normally be applied, subject to the provision of a minimum of 25sq.m of open space per dwelling. The glossary defines the inner city (in this area) as north of the Grand Canal / Londonbridge Road, i.e. not including the subject site.

Section 17.9.1 also states that *“Living rooms and bedrooms shall not be lit solely by roof lights and all habitable rooms must be naturally ventilated and lit.”*

7.0 GROUNDS OF APPEAL

The 1st party appeal was submitted by Colgan O’Reilly Architects on behalf of the applicant, David Kelly. The main grounds of this appeal can be summarised as follows.

7.1 NATURE OF THE APPEAL

7.1.1 The appeal is against Condition 2 only. The appellant requests that the board consider the application under Section 139 of the Planning and Development Act 2000, as amended.

7.2 EXISTING ACCOMMODATION

- 7.2.1 The existing house has two small rooms at 1st floor level which are used as bedrooms. They have inclined ceilings over 34% of the room, and do not meet current standards for apartment bedrooms.
- 7.2.2 First floor access is by way of a set of steep steps at a pitch of 48⁰, which is not compliant with building regulations. The planning officer did not fully comprehend the restrictive, dark, dull nature of the existing layout, which is not suitable for the owners.

7.3 POLICY AND DEVELOPMENT STANDARDS

- 7.3.1 The appeal cites policies of the City Development Plan and asserts that the proposed development is cognisant of these policies.
- 7.3.2 The appellant notes the development plan requirement that living rooms and bedrooms shall not be lit solely by roof lights, should be naturally ventilated, and have a minimum of 20% of the floor area equivalent as glazing. While not meeting all of the exact requirements, the proposed development represents an improvement.

7.4 PRECEDENT

- 7.4.1 The proposal is to move out the rear wall at first floor level by 2m beyond the existing building line. This would be in keeping with other permissions granted to similar dwellings.
- 7.4.2 The appeal provides a number of precedents at the following addresses. A summary of precedent cases is provided. Appendix A consists of a simple 3D modelling of some of the examples.
- 7 Pigeon House Road
 - 38 Veronica Terrace
 - 5 Dodder View Cottages [2-storey house nearby]
 - 35 Pigeon House Road
 - 8 Pigeon House Road
 - 39 Pigeon House Road
 - 9 Ballsbridge Avenue
 - 28, Pembroke Cottages
 - 76 Magdalen Terrace [See Section 5.2 above]
 - 77 Magdalen Terrace [See Section 5.2 above]
 - 89 Veronica Terrace [See Section 5.2 above]

7.5 IMPACTS ON ADJOINING

- 7.5.1 There are 2 windows in the extension of No. 36 which would seem to be a bedroom and a bathroom. The larger of the two is at the end of the extension and shadow analysis indicates that this window would not be negatively impacted upon.

8.0 SUMMARY OF RESPONSES

8.1 PLANNING AUTHORITY

- 8.1.1 The planning authority have not responded to the matters raised in the appeal.

9.0 ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following broad headings:

- Principle of development
- Nature of the appeal (condition only)
- Impacts on residential amenity
- Impacts on architectural heritage
- Screening for appropriate assessment

9.1 PRINCIPLE OF DEVELOPMENT

- 9.1.1 The site is zoned for residential use and this is a proposal for a residential extension. I consider the principle of development to be acceptable in this instance.

9.2 NATURE OF THE APPEAL (CONDITION ONLY)

9.2.1 Applicable legislation

- 9.2.2 This is a first party appeal against a condition only. As such, the terms of Section 139 of the Planning and Development Act 2000 (as amended) apply. This section gives the board the latitude to consider just the issues involved in the disputed condition(s), or to consider the entirety of the proposal 'de novo', and sets out the framework for this decision. Furthermore, if the former approach is to be followed, the legislation sets out what matters shall and shall not be considered. At this juncture, it is worth providing the wording of this section in its entirety.

139.—(1) Where—

- (a) an appeal is brought against a decision of a planning authority to grant a permission,*
- (b) the appeal relates only to a condition or conditions that the decision provides that the permission shall be subject to, and*
- (c) the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted,*

then, subject to compliance by the Board with subsection (2), the Board may, in its absolute discretion, give to the relevant planning authority such directions as it considers appropriate relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions.

(2) In exercising the power conferred on it by subsection (1), apart from considering the condition or conditions to which the relevant appeal relates, the Board shall be restricted to considering—

- (a) the matters set out in section 34(2)(a), and*
- (b) the terms of any previous permission considered by the Board to be relevant.*

By extension, on foot of Subsection (2)(a) above, it is worth considering Section 34(2)(a) of the Act

- (2) (a) When making its decision in relation to an application under this section, the planning authority shall be restricted to considering the proper planning and sustainable development of the area, regard being had to—*
 - (i) the provisions of the development plan,*
 - (ia) any guidelines issued by the Minister under section 28,*
 - (ii) the provisions of any special amenity area order relating to the area,*
 - (iii) any European site or other area prescribed for the purposes of section 10(2)(c),*
 - (iv) where relevant, the policy of the Government, the Minister or any other Minister of the Government,*
 - (v) the matters referred to in subsection (4), and*
 - (vi) any other relevant provision or requirement of this Act, and any regulations made thereunder.*
- (aa) When making its decision in relation to an application under this section, the planning authority shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28.*

Subsection (4) referred to in 'v' above relates to the types of conditions that can be considered that would regulate the development or use of adjacent land.

9.2.3 S139 or 'de novo'

- 9.2.4 In determining which route to take, the board is asked by the legislation to have regard solely to *'the nature of the condition or conditions [to which the appeal relates]'*.
- 9.2.5 In this instance, condition 2, which is replicated in full in Section 4.0 above effectively omits the first floor element of the scheme.
- 9.2.6 In my opinion, the first floor element is a major part of the scheme, and its omission may well bring into question the likelihood of the applicant proceeding with just the ground floor element. However, the condition itself is largely 'ring-fenced' from the principle of development and from other planning issues relating to the proposed development. Having regard to the nature of the condition, I do not consider that a determination by the board of the application as if it had been made to the board in the first instance (a 'de novo' assessment) would be warranted.
- 9.2.7 As such, I proposed to assess the application under the terms of Section 139 of the act.

9.2.8 What may be considered under a S139 assessment

- 9.2.9 Section S139(2) (see above) states that in assessing an appeal under this section, the board 'shall be restricted to considering' a number of factors. It is notable that the board is restricted from considering the matters set out in Subsection 34(3) of the act, namely

(a) in addition to the application itself, any information relating to the application furnished to it by the applicant in accordance with the permission regulations,

(b) any written submissions or observations concerning the proposed development made to it in accordance with the permission regulations by persons or bodies other than the applicant.

- 9.2.10 The entirety of the remainder of this report is framed in terms of Section 139, and my determination above. I have sought to focus on the matters covered in S139 and excluded those which the board is restricted from considering.
- 9.2.11 If the board arrive at a different decision on this matter, a 'de novo' assessment, incorporating these excluded matters would be required.

- 9.2.12 On the basis of my determination, I do not propose to consider any issues relating to the ground floor aspect of the proposal such as private open space, impacts of ‘flipping’ the yard, or internal reconfigurations.

9.3 IMPACTS ON RESIDENTIAL AMENITY

- 9.3.1 The proposed development would create additional volume to the rear of the house. The existing ‘box dormer’ extension element is in line with the adjoining first floor extension to the south, and with the original rear building line below, but the proposed extension would extend around 2m further into the plot’s depth. This in itself would create additional overshadowing of adjoining properties and their small yards within the block to the east, north, and south, and would create a visually dominant element within the roofscape, particularly when viewed from #36 to the north and #40 to the southeast. Nevertheless, I do not consider this impact or the resulting loss of daylight and sunlight to be of a magnitude that would warrant a refusal of permission and/or imposition of Condition 2.
- 9.3.2 The cill height of Bedroom 2 (east facing) is shown as being around 1.4m in height, enough to afford views outward while standing, but not while sitting. Separation distances to the rear yard of No. 40 would be in the order of around 6m. While this would be very low, the geometry is such that the observer would need to be very close to the window to avail of such views down into No. 40. Overlooking would be intermittent. As such, I do not consider the impact to warrant a refusal of permission and/or imposition of Condition 2.
- 9.3.3 On the issue of residential amenity of the scheme itself, I note the policy of the City Development Plan that bedrooms not be lit by skylights alone. Given the cill heights involved; 1.25m and 1.4m (Bedrooms 1 and 2 respectively), I do not consider that this situation arises.

9.4 IMPACTS ON ARCHITECTURAL HERITAGE

- 9.4.1 I note that the proposed development would result in the addition of 2 ‘Velux’ style rooflights to the front roof pitch. There does not appear to be any precedent for such an intervention in the single storey houses of Dodderview Cottages. There does not appear to be such a precedent (from aerial photography) in the similar houses at Stella Gardens either, although there does seem to be precedent at St. Patrick’s Villas, in Ringsend.
- 9.4.2 This is a matter of concern, particularly given the site’s location in a residential conservation area. The planning officer’s report does not address this issue, nor was the case referred to the conservation office. I would have some concerns recommending omitting the condition under appeal without a position on the matter being expressed by the planning authority. However, on balance, and

given the planning authority's opportunity to provide comments at appeal stage, I do not consider this to be an impediment to omitting the condition.

9.5 SCREENING FOR APPROPRIATE ASSESSMENT

- 9.5.1 The nearest Natura 2000 sites are the Dublin Bay SAC and North Bull Island SPA around 1km to the east. Given the minor nature of the proposed development, I do not consider that the proposed development would be likely to have any significant effects on the integrity of a European site having regard to its conservation objectives.

10.0 CONCLUSION AND RECOMMENDATION

- 10.1.1 Based on the above, I recommend that, in line with the provisions of Section 139(1) of the Planning and Development Act 2000 (as amended), the board direct the planning authority to **remove** Condition 2 in their notification to grant permission.

11.0 REASONS AND CONSIDERATIONS

1. The proposed development would represent a significant addition into the roofscape within this block, but would not cause overshadowing and overlooking to such an extent as would warrant a refusal of permission in this instance. The proposed first floor extension represents a reasonable modification to this residential property, in line with City Council policy, and would not detract from the residential amenities of the area, or from the visual amenities of the area, in light of the site's location in a Z2 Residential Conservation Area.

G. Ryan
Planning Inspector
9th June 2016