



An
Bord
Pleanála

Inspector's Report PL29S.246870

Development	Retention and completion of development to rear of property at 312 South Circular Road, Dublin 8.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2738/16
Applicant(s)	Maan Alyan
Type of Application	Retention Permission and Permission
Planning Authority Decision	Refuse Retention Permission and Refuse Permission
Appellant(s)	1. Maan Alyan
Observer(s)	1. Sean Doyle
Date of Site Inspection	21 st of September 2016
Inspector	Angela Brereton

1.0 **Site Location and Description**

The application site is on the north side of the South Circular Road, opposite the junction with Dolphin Avenue. The Coombe Hospital is to the north with access from Dolphin's Barn.

No. 312, is an end of terrace two storey period property, characterised by similar type properties. A large part two/single storey extension has been constructed at the rear of the property. This has been rendered and includes windows at ground and first floor levels on the side elevations. It appears externally for the most part to be completed. There is a patio and garden area at the rear. The side passage area to the west is gravelled. There is a narrower surfaced passageway between the east of the extension and the boundary wall with the adjoining property no.310. This has a smaller two storey return and the first floor window facing the site is obscure glazed.

There is a gated entrance to the site and a rough gravel area along the western side passage to the rear garden and patio area. There is a high block wall between this property and the area to the west. No 314 South Circular Road is further to the west.

There is onsite parking at the site frontage. There is a footpath and bus lane in front of the site, and paid/permit parking further along the road.

2.0 **Proposed Development**

The development to be retained and completed comprises the following:

- a) The demolition of original 2 storey return and single storey annex to the rear of the property (c.63.6sq.m demolished in total)
- b) The construction of a part single and part two storey extension to the rear of the property (c.118sq.m) together with boundary treatment and landscaping works.

The application form provides that the total site area is 0.0384ha, the total area of the buildings to be retained on site is 118.2sq.m. It provides that the proposed plot ratio is 0.64 and the proposed site coverage is 36.5%.

A Site Layout Plan, Floor Plans, Sections and Elevations have been submitted.

Brook McClure have submitted a Planning Report with the application on behalf of the applicant. This has regard to the site context and provides a rationale for the development to be retained.

3.0 Planning Authority Decision

On the 15th of June 2016 Dublin City Council refused retention permission and permission for the development for the following reason:

Having regard to the height, bulk, scale, layout and design of the development for which retention and completion is sought, and the unacceptable level of overlooking and overshadowing of adjoining properties created as a consequence of this development, it is considered that the development as proposed, would seriously injure the residential amenities of neighbouring properties in the vicinity. The proposed development would, if permitted, set a precedent for other such substandard developments in this residential conservation area, and would contravene stated policies of the City Development Plan 2011-2017. The proposed development, for retention and completion, would therefore be contrary to the proper planning and development of the area.

3.1 Planning Authority Reports

The Planner had regard to the locational context of the site, planning policy, the internal reports and submissions made. They had serious concerns about the nature and scale of the extension to be retained and about issues of overlooking and overshadowing of adjoining properties and consequent impact on residential amenity and loss of privacy. They considered that a grant of retention permission would set

an undesirable precedent which would impact upon the preservation of amenities in this residential conservation area and recommended refusal.

3.2 Other Technical Reports

Internal

Housing & Residential Services

They have regard to issues concerning the unauthorised development and note that a commencement notice was not submitted prior to the construction of the development. They have regard to Title issues and consider the development an encroachment upon DCC lands. They recommend a refusal of permission for reasons of encroachment and overlooking.

Engineering Department Drainage Division

They have no objections subject to compliance with general drainage conditions and to the incorporation of SuDs in the management of stormwater.

3.3 Third Party Observations

Submissions have been received from local residents whose concerns include the following:

- The scale and bulk of the new extension is out of scale with the original return and other developments in the area and constitutes an overdevelopment of the site.
- They submit that the bulk and height of the new extension should be reduced.
- The new extension has resulted in overlooking and overshadowing of adjoining properties.
- They have regard to planning history in the Appendices to their submission.

- They consider it has an adverse impact on the amenities of adjoining properties and the retention application should be refused.

4.0 **Planning History**

Subject site

There appears to be no recent planning history of applications relevant to the site.

Ref. E0225/16 – Refers to a Warning Letter issued by the Council regarding the unauthorised works on site.

5.0 **Policy Context**

5.1 **Development Plan**

The appeal site is governed by the policies and provisions contained in the Dublin City Development Plan, 2011-2017. Section 15.10.2 refers to the 'Zoning Principles' - land use zoning as shown on Map 'E' the indicative land use zoning objective for the site under the City Development Plan is 'Z2': "to protect and/or improve the amenities of residential conservation areas". The application site is not a Protected Structure.

Chapter 17 provides the 'Development Standards' and regard is had in particular in this case to the following Sections:

Section 17.9.1 provides the Residential Quality Standards A3 refers to House only (in addition to A1 standards –all residential development).

Section 17.9.8 refers to Extensions and Alterations to Dwellings. This notes 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 provides Guidelines for Residential Extensions

6.0 The Appeal

6.1 Grounds of Appeal

A First Party Appeal has been submitted by Brock McClure on behalf of the applicant. The grounds of appeal can be summarised as follows:

- They have regard to the site context and to the pattern of development in the area and note that the dwellings along this terrace all feature single and two storey rear extensions.
- They provide that the structures demolished at the rear of no.312 South Circular Road were in poor condition and consider the rebuild is a more sustainable option to upgrade the accommodation for modern family living.
- While originally to be exempted development, the area of the retention development now requires planning permission to regularise the situation.
- They submit photographs showing the rear extension in the context of its surrounds and consider that it has a simple and traditional form.
- They do not consider that the proposal causes undue overlooking and include photographs. They are prepared to comply with conditions regarding alterations to the first floor windows.
- They include an Assessment of Overshadowing relative to March, June and December and provide that it will not have a negative impact on adjoining property.

- They submit that the maximum height is c.6.3m with a ridge height below the eaves of the existing house providing for the subordinate approach.
- They consider that the refusal of the Council is unwarranted and not subject to any factual evidence that the proposed development would result in undue overshadowing on the neighbouring properties and note that this could have been addressed by way of further information.
- They note that location of the site within a residential conservation area and provide that the subject development for a rear extension has limited views from the public road. They provide photos to show that the extension is not visible in the streetscape and submit that it does not negatively impact on the residential conservation area.
- Plot ratio, site coverage and private open space all comply with DCDP 2011-2017 standards. They submit that this development is fully in accordance with policy for extensions and alterations to dwellings and achieves a significant improvement in design and construction of the previous structure.
- They submit that the development has been thoroughly tested against DP requirements for residential extensions and accords with all relevant standards and conclude that retention permission should be granted.

6.2 Planning Authority Response

They have regard to the First Party grounds of appeal and provide that the reasoning on which the P.A's decision on the application was based is set out in the Planning Report located on the file. They wish to re-iterate the reasons for refusal and request ABP to uphold the decision.

6.3 Observations

Antóin Doyle Architects has submitted an Observation on behalf of local resident Seán Doyle, who is the owner of the adjoining property no.310 (he resides at

no.306). He provides that no.310 has been an ongoing restoration project for his father who plans to occupy that building when the works are completed. His Observation includes the following:

- The planning application does not accurately represent the original two storey return demolished, which as shown on the aerial photograph was similar in length (c.6m) to other original returns still present at Nos. 304 and 308. A single storey extension built c.1974 was also demolished. Appendix C refers.
- Details of floor areas are provided and it is noted that the two storey extension now built is larger than the original house. The new development does not replicate the structures originally demolished. The application for retention should accurately reflect what has actually been built.
- The new extension is vastly out of scale with the original two storey return and the existing rear extensions to other houses along the terrace and they refer to Appendix A included with their Observation.
- They consider that it an over development of the site and has a substantial negative impact on neighbouring properties and attach photos in Appendix B.
- The new extension is built closer to the boundary with no. 310 than the original return and has an overbearing and overshadowing effect on this property.
- The design and standard of accommodation provided is poor. The shallow roof pitch means that the side walls are higher than necessary. The increased height has a negative impact on the residential amenities of no.310.
- Setting back and reducing the height of the extension would reduce its dominance to the rear and improve the impact on their residential amenities.
- They consider that the Shadow Assessment is misleading as an accurate assessment of the previous extensions has not been included. They have

attached Shadow Diagrams in Appendix E of their submission showing the impact of the new development on the rear of No.310.

- They have a number of concerns regarding issues of overlooking which they consider has an overbearing impact on the enjoyment of the residential amenities of no.310.
- They note that the side lane is in the ownership of Dublin City Council as noted in the Planner's Report and have concerns regarding access and boundary wall issues.
- They consider that it does not comply with planning policy for extensions and refer to Appendix 25 of the DCDP 2011-2017 and that it would set an undesirable precedent and retention permission should be refused.

6.4 Further Responses

Brock McClure has submitted a response to the Observation on behalf of the applicant, this includes the following:

- They submit that the contention that the planning application does not accurately represent the original two storey return is incorrect and that the drawings submitted are accurate in measurement and reflect the layout of the site.
- While it is acknowledged that the new extension is larger than the original it is not significantly out of scale with the surrounding context and particularly that of the extension at no.310.
- Concerns about overdevelopment are overstated. Key development standards are met relative to plot ratio, site coverage and open space.
- Their Shadow Assessment was commissioned by Digital Dimensions who are a highly experienced and well regarded company and the assessment has

been carried out in accordance with the BRE Guidelines. It concludes that there will be no negative impact on the neighbouring property.

- They provide that the development is in accordance with the proper planning and sustainable development of the area and request that permission be granted.

7.0 **Assessment**

7.1 The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development and Planning Policy
- Boundary issues
- Design and Layout
- Impact on Residential Amenity
- Impact on the Character and Amenities of the area
- Appropriate Assessment

7.2 **Principle of Development and Planning Policy**

The issue for consideration in a retention application is whether the development would be sustainable and permission would have been granted in the first instance in accordance with planning policies and taking into account the character and amenities of the area, if the unauthorised development had not taken place. In this case the applicant has demolished the original two storey return and single storey annex to the rear and constructed a part two storey/single storey extension at the rear of the property, which provides a sizable increase in living accommodation and

is discussed in the Design and Layout Section below. The issue is whether the extensions that have taken place would now be deemed to be acceptable and in the interests of the character and amenity of the area and not be detrimental for neighbouring residents.

The impact on adjoining properties and the character of the area needs to be considered. The First Party submits that the retention development represents a well-designed extension to this previously extended dwelling which seeks to improve the standard of accommodation while also respecting the character, appearance and residential amenity of the area. They provide that it complies with standards and does not constitute an overdevelopment of the site.

Section 17.9 of the Dublin City Development Plan 2011-2017 provides 'Standards for Residential Accommodation' and S.17.9.1 refers to the 'Residential Quality Standards' and Section 17.9.8 to 'Extensions and Alterations' to dwellings. This provides that well designed extensions will normally be granted provided that they have regard to the amenities of adjoining properties and that the design integrates with the existing building. Appendix 25 provides 'Guidelines for Residential Extensions' and the general principles include that the proposed extension should not have an adverse impact on the scale and character of the dwelling, or on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight and achieve a high quality of design.

Whereas a well-designed extension is normally permissible in this land use zoning in accordance with the criteria of Section 17.9.8, and Appendix 25 the issue in this case is whether the development proposed for retention would integrate well or have an adverse impact taking into account the location of the site, boundary issues, the amenities of the adjoining dwellings and the character of the existing house and of the streetscape in this residential conservation area. These issues are discussed further in the context of this assessment below.

7.3 **Boundary issues**

The Council provide that the site is bordering a controlled i.e. gated access lane in public ownership. This area is proximate to no.314 on the opposite side of the lane to the west. There is a high block wall between these properties and it was noted on site that this access lane appears to have been blocked off i.e unlike what is shown on the Site Location Map there is no direct access from the lane or site to the rear. Also when visiting the site the gravelled area to the west of the No.312 appears as an access to their rear garden area.

The Housing and Residential Services Section of Dublin City Council have regard to the unauthorised development and have concerns that a commencement notice was not submitted and that there is no provision in the Acts or Regulations for the retrospective submission of a commencement notice. They are the registered owner of the lands adjacent to no.312 and provide the Folio no. and are satisfied that the existing site boundaries were intact until relatively recently i.e until the change of ownership/commencement of the unauthorised development at the rear of no.312. They provide that therefore there can be no basis for any claim of adverse possession in relation to the ownership of the lands. They consider that this development is an encroachment onto DCC lands and dispute the site boundary as shown on the Site Layout Plan. They are concerned that the footprint of the original return has been changed with the footprint of the extension now projecting/stepping out approx. 300mm into DCC lands as shown on the drawings and consider it unusual for a gable not to be flush with the gable of the main structure. They are also concerned that the new party/boundary garden wall may also partly encroach on DCC lands. They provide that the 5no. windows in the new gable wall directly overlook DCC lands and will constitute an infringement on the rights of the Council regarding the use of its lands etc.

They note that a DCC owned gateway has been opened/removed and access gained to DCC lands to facilitate construction etc. without the permission/agreement of DCC. Also that an existing party garden boundary wall between the properties

has been removed/demolished without the permission/agreement of DCC and the construction of an extension (subject of this application for retention) has commenced (now completed) elements of which partially encroach upon DCC lands.

They recommend a refusal as they provide that the applicant does not have title to the lands as indicated/implied on the submission drawings. Also as the fenestration at ground and first floor level, on the party line, directly overlooks lands not in the ownership of the applicant thus preventing the registered owner of the lands exercising its rights in terms of the future use of the lands etc. whether for development or other purposes as prescribed by the zoning, proper planning and development etc. They are concerned that the foundations and eaves of rising walls of the extension as constructed/proposed overstep the party line onto DCC lands, and the proposed new party/boundary garden wall (now constructed) may also encroach on DCC lands and include a map 'Disposal of Corporation interest'.

The Observers note that the side lane is in the ownership of Dublin City Council. They provide that there has never been a side access from no.312 to the lane and that it provides access to the Boys Brigade playing pitches at the rear. This issue relative to ownership of this adjoining land and access has not been addressed by the First Party in the information submitted. An application has not been received for the change of use of this area to private open space.

It is of note however, that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "A person shall not be entitled solely by reason of a permission under this section to carry out any development". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts..."

Notwithstanding this, it is of note that as shown on the Land use zoning map – Objective Z14, (S.15.10.13 of the DCDP 2011-2017 relates) that the area to the north of the site relates to regeneration lands: ‘SDRA 12’ St. Teresa’s Gardens (inclusive of former Player Wills, former Bailey Gibson sites and Coombe Hospital). Par.4 relates to this area and provides for strong permeability through these lands including linkages with the South Circular Road and the Grand Canal corridor. Therefore it is considered important to retain this linkage to these regeneration lands to the north.

7.4 **Regard to Design and Layout**

The extension proposed for retention is to the rear of no.312 South Circular Road. It appears externally to be relatively complete. It is part 2 storey with the rear element being single storey. As shown on the Site Layout Plan the total area for retention is 118.2sq.m. This comprises a net area for the ground floor as 68.5sq.m. and the first floor of 49.7sqm. The total floor area of the former 2 storey rear return (44.6sq.m), including the single storey extension(19sq.m) that has been demolished is given as 63.6sq.m i.e.108.2sq.m.

The maximum height at 6.3m, with a ridge height below the eaves of the existing house (c.8.3m). It is provided that this follows the subordinate approach for extensions as required in Appendix 25 of the DCDP 2011-2017. Section 8.0 of Appendix 25 provides: *The subordinate approach means that the extension plays more of a ‘supporting role’ to the original dwelling. In general the extension should be no larger or higher than the existing.*

The First Party provides that the extension to be retained largely replicates the demolished structure and is appropriate to the scale and form of the existing dwelling. This is disputed by the Observer who considers that the current extension is significantly greater to that which has been demolished and exceeds the floor area of the original house which is c.112sq.m. They attach in Appendix D of their submission details of drawings from earlier permissions relative to the single storey

rear extension which has now been demolished. Their Appendix C shows photographs of this. As shown on the current Site Layout Plan and as seen on site relative to other more original returns this increase in bulk would appear to be the case in particular relative to the scale and depth of the two storey element of the extension. This extends further towards the eastern boundary leaving a c.1.5m gap in lieu of what was originally a staggered 3/2m gap.

It is noted that this is a long narrow site and that the rear garden area to be retained which includes a grassed and patio area and as shown on the Site Layout Plan is approx. 150sq.m. This is not at issue as it exceeds the DCDDP requirements for private open space for a 4 bedroomed house. Also the plot ratio and site coverage are within the DP standards for such.

7.5 Impact on Residential Amenity

There is concern with regard to the impact on the residential amenity of adjoining properties having regard to issues such as overlooking and overshadowing. The Observer is particularly concerned about negative impacts of the new extension on their adjoining property to the east no.310 South Circular Road. They consider that it has an overbearing and overshadowing impact and that this has worsened since the demolition of the original lower 2 storey return and single storey extension. They recommend that if the Board decide to permit that the extension be reduced in height and bulk to protect the established levels of amenity to both properties. They are concerned that the addition of five new windows in the side elevation is unacceptable, and the re-orientation of one of the windows, as proposed by the First Party will not be sufficient to rectify this situation.

The First Party consider that the issue of overlooking is unfounded by virtue of separation distances, obscure glazing and established precedent. In this respect they have regard to side windows in the now demolished former return. There is a wall along the eastern boundary of the subject site which prevents overlooking from the ground floor windows on the eastern elevation. They propose to provide obscure

glazing on the first floor eastern elevation to prevent overlooking of the neighbouring property. It is noted that there is a first floor window on No.310's smaller rear return which is facing the subject extension and this is obscure glazed. If the Board decide to permit it is recommended that the first floor window in the eastern elevation be obscure glazed.

It is noted that Dublin City Council also have concerns about the five new windows in the western elevation facing what is Council land outside the site boundaries of this property and consider that it will constitute an infringement on the rights of the Council regarding the use of its lands. The First Party provide that the side windows adjacent to the lane provide passive surveillance and the first floor windows are to bedrooms only. Notwithstanding this, they are also prepared to accept a condition to remove the second additional window on the west elevation to the north elevation, orientation towards the garden. There is a c.3m high block wall to the west of the gravel drive which now appears to have been included as part of their access to the rear garden area. This area appears to be Council land outside of their boundary. This wall provides screening for end of terrace property no.314 South Circular Road which has two first floor windows facing on their much smaller original rear return.

7.6 **Sunlight, Daylight and Overshadowing**

In relation to the matter of overshadowing the design of schemes should be guided by the principles of good site planning to allow for access to daylight and sunlight for the development and in particular the residential units and also neighbouring residential properties. The issue of adverse impact on sunlight and daylight and of overshadowing from the proposed development on the adjacent residential properties has been raised by the Observer.

Regard is had to Par 17.9.1 of the DCDP which has regard to natural lighting in residential development. Section 6.0 of Appendix 25 provides: *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.

The First Party have submitted a Shadow Impact Assessment by Digital Dimensions with casting diagrams for the March - Equinox, June -Summer and December - Winter Solstices. The greatest impact appears to be at 16.00 on the 21st of March and the 21st of June. It is provided that this impact is marginal. It is noted that the Autumn Equinox is not presented. The Observer at the adjoining property to the east no.310 is concerned that the new extension will cause greater levels of overshadowing especially in the late Spring and Summer period. They consider that the Assessment submitted is misleading as an accurate record is not available of the previous extensions. They have attached Shadow Diagrams in Appendix E of their submission showing the 3D impact of the new development on the rear of No.310. The First Party invites the Board to solely rely on their assessment submitted with the Appeal.

Having regard to the issues raised, the locational context of the site relative to the residential properties and to the Analysis and Studies submitted by the Parties it is considered that there will be some additional overshadowing at certain times of the year due to the height and massing of the development proposed for retention in this urban area.

7.7 Impact on the Character and Amenities of the Area

The subject site is within the area zoned Objective 'Z2' i.e: *To protect and/or improve the amenities of residential conservation areas.* The general objective for these areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

It is noted that the development while within the Z2 zoning is not specifically within a Conservation or Architectural Conservation Area. However, it is within this zoning due to the quality of the architecture in the surrounding area i.e Section 15.10.2 provides: *The overall quality of the area in design and layout terms is such that it*

requires special care in dealing with development proposals which affect structures in such areas, both protected and non-protected. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

This area of the South Circular Road is characterised by extensive groupings of Victorian terraced houses which present an attractive streetscape on both sides of the road. The First Party provides that key views demonstrate that the subject rear extension does not have a negative visual impact on the character of the residential character area.

As shown on the photograph in Fig.11 of their grounds of appeal the new extension on the side elevation of the property is more visible as it is an end of terrace and there is a laneway of c.4.4m on either side of the railings which creates a separation distance of c.8.8m between no.312 and no.314 on the opposite side of the lane. It may also be considered to set a precedent for such larger scale rear extensions, which present issues of overlooking and overshadowing, which would be to the detriment of the character and amenities of the area. It is considered that as the development is located at the rear of the existing property and in view of the lower ridge height of the rear return it is not particularly visible from the South Circular Road, especially when the gate is closed as shown on this photograph. As no alterations are proposed to the front elevation it is considered that while it will be more conspicuous than that previously demolished, and not particularly in character with the existing dwelling, it will not impact significantly on the character of the streetscape or on the Z2 residential/conservation land use zoning.

7.8 Appropriate Assessment

It is considered that having regard to the nature and scale of the development which is for domestic/residential purposes in a fully serviced suburban location, and to the nature of the receiving environment, that no appropriate assessment issues arise.

8.0 Recommendation

8.1 I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations/ Reasons

1. The Board is not satisfied, on the basis of the submissions made that the development proposed for retention would not impact adversely on adjoining Dublin City Council lands to the west or prejudice permeability and access to these lands, including the regeneration lands to the rear i.e. north of the site. Land Use Zoning Objective Z14, (S.15.10.13 of the DCDP 2011-2017, paragraph 4 of SDRA 12 - *St. Teresa's Gardens* of the Dublin City Development Plan 2011-2017 refers). Therefore the development proposed for retention would not be in the interests of the proper planning and sustainable development of the area.
2. The development proposed for retention, is significantly larger than that demolished and it is considered that it has an adverse impact on the amenities of adjoining properties by reason of its scale and bulk and the location and number of additional windows on the side elevations and that it increases overlooking and overshadowing. It is therefore considered that it does not set a desirable precedent in this residential/conservation area or comply with Section 17.9.8 or Appendix 25 of the Dublin City Development Plan 2011-2017 and its retention would not be in the interest of the proper planning and development of the area.

Angela Brereton,
Planning Inspector.

26th of September 2016