



An
Bord
Pleanála

Inspector's Report 29N.246983

Development	Construction of an extension to the rear and to previously converted attic and ancillary works at 11 Kempton Avenue, Navan Road, Dublin 7
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	2828/16.
Applicant(s)	Elizabeth Craig.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions.
Appellant(s)	Elizabeth Craig.
Date of Site Inspection	12/10/2016
Inspector	Dolores McCague.

1.0 Site Location and Description

- 1.1. The site is located at Kempton Avenue, north of Navan Road near the Ashtown roundabout which is north of Phoenix Park and south of the Royal Canal.
- 1.2. Kempton Avenue is part of a relatively modern development area of two storey detached, semi-detached and terraced housing. Kempton Avenue comprises two storey detached houses on narrow sites, with the longer axis of houses at right angles to the road with high half hipped roof and lower gables facing the road.
- 1.3. The subject site is occupied by a high detached two storey house with narrow side passages to either side.
- 1.4. The front and rear gardens are of similar modest proportions and a shed in the rear garden further reduces the available site area.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of an extension to the rear of the house including extensions to the ground floor, first floor and previously converted attic areas.
- 3.0 The extension will provide for an increase in the kitchen area, extended floor areas to two existing bedrooms at first floor and extended attic space, stated to be for use as storage.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 8 conditions; wrongly numbered as 9 conditions, (no condition No. 2).

The decision was in accordance with the planning recommendation.

The second condition states:

The proposed window on the side elevation at first floor level (serving the ensuite of bedroom no. 1) and the proposed window on the rear elevation at extended attic plan level shall be permanently glazed with obscure glass.

Reason: In the interests of privacy and amenity.

The third condition states:

The development shall be revised as follows

- a) The proposed extension to the previously approved converted attic and associated 4 no. rooflights as stated in the public notices shall be omitted
- b) The new roof over the extended bedroom No 1 and bedroom No 2 (at first floor level) shall be reduced in height from 8250mm to the same height as the roof over bedroom No 3 on the front elevation (c7.3m)
- c) Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the planning authority

Reason: In the interests of orderly development and visual amenity.

The final condition states:

The attic space hereby approved shall only be used for storage

Reason: In the interests of maintaining an adequate standard of residential amenity.

4.2. Planning Authority Reports

The report of the area planner includes:

History

9 Kempton Avenue – permission granted for construction of two storey extension to rear (kitchen extended at ground floor, two bedrooms extended at first floor to include en-suite, and an extension to already converted attic). The planner's report on that file is cited

the proposed development has an area of 55.80m² and the scale of the extensions in keeping with existing house and works proposed would improve the residential quality within this property. The proposed development is acceptable to the planning authority and it is considered that the development would not seriously injure the residential amenities existing in the area. It is considered that the proposed development will not result in any unacceptable level of overshadowing, overlooking or reduced amenity for the adjoining residential properties and that it will add to the usability and amenity value of the subject property, WEB1029/10.

13 Kempton Avenue – permission granted for construction of two storey extension to rear projecting above kitchen extension and permission for attic conversion which will change the appearance of the roof rear elevation allowing attic space for additional bedroom.

The planning authority notes that a precedent has been set for almost the exact same development at the adjoining property at 9 Kempton Avenue. It is noted that the extension at No 9 is 3770mm long x 5600mm wide at ground floor; 3770mm long x 6000mm wide at first floor level and 6040mm long x 3738mm wide (internal dimensions) at attic level. The development granted at No 9 was a decision of the planning authority made under a previous Development Plan (2005-2011).

Under the current DCDP 2011-2017 the planning authority has concerns with the scale and height of the proposed extension to previously approved converted attic, nor has the applicant submitted the planning reference number on the application form. This part of the proposed development to be omitted by condition and the roof over the extended bedroom No. 1 and bedroom No. 2 should be the same height as the roof over bedroom no 3 on the front elevation (c7.3m).

The remaining open space is c70.2sq m (7.8m long x 9m wide), however an existing shed of c 18sqm reduces this west-facing rear garden area to c 52 sq m which is considered adequate.

The proposed development would not impact on the residential amenity of the subject property or the adjoining properties in terms of overshadowing, overbearing or overlooking.

Accords with DCDP2011-2017, S17.9.8 and Appendix 25.

4.3. Other Technical Reports

Engineering Department – Drainage Division – conditions.

5.0 Planning History

No planning history is given in relation to the subject site.

Adjoining sites:

(as referred to above under Planner's report) 9 Kempton Avenue, adjoining to the south. permission granted for almost exactly the same development, WEB1029/10, under the 2005 – 2011 Development Plan.

13 Kempton Avenue – adjoining to the north, permission granted for construction of two storey extension to rear and for attic conversion for use as a bedroom.

6.0 Policy Context

7.0 Development Plan

Dublin City Development Plan 2016-2022 is the operative plan.

Relevant provisions include Chapter 16 and Appendix 17

Chapter 16 - Development Standards - Dublin City Council will seek to ensure that alterations and extensions will be sensitively designed and detailed to respect the character of the existing building, its context and the amenity of adjoining occupiers.

In particular, alterations and extensions should:

- Respect any existing uniformity of the street, together with significant patterns, rhythms or groupings of buildings
- Retain a significant proportion of the garden space, yard or other enclosure
- Not result in the loss of, obscure or otherwise detract from architectural features which contribute to the quality of the existing building
- Retain characteristic townscape spaces or gaps between buildings
- Not involve the infilling, enclosure or harmful alteration of front lightwells

Appendix 17 Guidelines for Residential Extensions - Proposals should:

- Not have an adverse impact on the scale and character of the dwelling
- Have no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight
- Achieve a high quality of design.

8.0 The Appeal

8.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

The Board is requested to consider the appeal under Sec 139 i.e. as an appeal against conditions. The appeal is against condition no. 4 only.

The proposed development involves the provision of 47m² to the rear of the dwelling with 13.5m at ground floor, 19 sq m at first floor, of 3.5m depth.

An attic conversion has already taken place with four roof lights for natural light and ventilation in its western slope for which a certificate of compliance, that such work comprised exempted development was obtained, and a copy is attached: a letter from TJ Gallagher & Co. Chartered Building Surveyors, Architects, Planning Consultants, which states that the conversion is of the attic space to facilitate the provision of additional space within the dwelling to be used for a purpose incidental to the enjoyment of same i.e. storage, with the converted area being connected to the main house by timber stairs; it states that the development being works which affect only the interior of the dwelling etc, is exempt.

The development at 9 Kempton Avenue, adjoining to the south, WEB1029/10, is referred to, which at 55.80 sq m is larger than the subject development. The provisions of the previous plan, under which it was permitted (2005 DP) are strikingly similar to the current plan. The planner's report does not identify any differences.

The reason for the condition – orderly development – is contested.

The clause in the condition reason which references visual amenity is contested.

There have been no objections to the proposed development.

The conflict between condition 3, which requires obscure glass in the attic window, and condition 4 (a), which requires the omission of the attic extension, is referred to.

Paragraph 7.3.1 of the Development Management guidelines, on the imposition of conditions, applies a test as to whether without the condition, permission for the proposed development would have to be refused; they consider not.

Clause 4(b) reduces the roof height from 8.250m to 7.3m, a reduction of 0.95m which shows how minimal the affect is. It is difficult to conclude that any harm resulting from the proposal would be sufficiently serious to necessitate this condition.

The appellant's sister, who suffers from ill health, has recently relocated to live with her and the proposal seeks to provide additional storage capacity to accommodate the move. The condition would have severe repercussions for the quantum of necessary extra floorspace.

8.2. **Planning Authority Response**

Refers the Board to the Planner's report on file.

9.0 **Assessment**

9.1. 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.

9.2. This is an appeal against a condition. In accordance with Section 139 of the Planning and Development Act, having regard to the nature of the condition, I am satisfied that a determination by the Board of the application as if it had been made to it in the first instance would not be warranted. Accordingly the issue to be considered is the condition numbered as condition 4 which is the third condition of the decision.

9.3. It states

The development shall be revised as follows

- a) The proposed extension to the previously approved converted attic and associated 4 no. rooflights as stated in the public notices shall be omitted
- b) The new roof over the extended bedroom No 1 and bedroom No 2 (at first floor level) shall be reduced in height from 8250mm to the same height as the roof over bedroom No 3 on the front elevation (c7.3m)
- c) Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the planning authority

Reason: In the interests of orderly development and visual amenity.

10.0 I have some reservations regarding proximity of houses to the rear and having regard to the limited rear garden areas. Currently the main houses, excluding the returns, are set at a separation distance of 22m back to back. This is the normal recommended minimum distance and will be reduced when the extensions are built. Any concern requiring privacy distance would apply equally to the first floor area. In relation to separation distances between houses with second floors, the minimum recommended distance is 35m. I would consider it necessary therefore to require that any glazing at this level would be in obscured glass. I note that condition No 3 requires obscure glass to be fitted in the attic window.

11.0 As pointed out by the first party, a very similar development to that proposed has been carried out, further to planning permission, on the adjoining site.

12.0 The first party has supplied details of the steps taken, prior to converting the attic to storage use, to ensure that the development was exempted.

13.0 The first party states that the impact of the appealed condition, in terms of the physical appearance of the building, is a reduction in height of 0.95m; while one

might disagree that this is an insignificant reduction in height or might consider that the removal of the window at this level is an equally significant reduction in impact, on balance, and in light of the development on the adjoining site, I consider that the condition is unnecessary.

14.0 I note that condition No. 9 requires that the attic space be used only for storage and I am satisfied that the extended attic space is suitable for such use.

15.0 **Recommendation**

15.1. I recommend that the Board should direct the planning authority to remove the condition and the reason therefor.

16.0 **Reasons and Considerations/ Reasons**

Having regard to pattern of development in the vicinity it is considered that the extended attic space would be suitable for domestic storage use and that its development for such use would not unduly detract from the amenities of adjoining residential properties or otherwise be contrary to the proper planning and sustainable development of the area.

Planning Inspector

Date

Appendices

Appendix	1	Map and Photographs
Appendix	2	Extracts from the Dublin City Development Plan 2016 – 2022