



An
Bord
Pleanála

Inspector's Report 29N.247010

Development	Construction of a first floor extension and retention of ground floor extension and ancillary site works at 22 Rutland Place North, Dublin 1
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2328/16
Applicant	Edward Fallon
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions.
Appellant	David Colgan
Observer	Cuisle Properties
Date of Site Inspection	19/10/2016
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1. The site is located at 22 Rutland Place North, Dublin 1. Rutland Place North is located off the North Circular Road just west of Summerhill. Rutland Place North serves terraced housing, which forms the southern boundary of the street, and the rear of residential properties, which forms its northern boundary.
- 1.2. The subject site is occupied by a two storey terraced dwelling which is at the end of a terrace of four such dwellings close to the junction with North Circular Road. Adjoining to the east and south there is a large site, which is currently vacant and which was the subject of an application for planning permission for residential development in 2014 (244549).
- 1.3. The subject site is occupied by a two storey pitched roof dwelling sited at the inner edge of the footpath, with a single storey extension to the rear which occupies the entire rear of the site.
- 1.4. To the east, at the street edge, there is a blocked up door in a wall which forms the frontage of the adjoining land. There is a blocked up doorway from the subject dwelling to that adjoining land. The rear of the site adjoins a shed on the adjoining land.
- 1.5. The site is given as 36m².

2.0 Proposed Development

- 2.1. It is proposed to
 - Retain the ground floor rear extension, and
 - Construct a first floor extension,

2.2. Decision

The planning authority decided to grant permission subject to 6 conditions including:

Condition no 2

The development hereby approved shall be amended as follows:

- (i) The bedroom window in the side elevation at first floor level shall be set back so that a minimum distance of 1000mm shall be retained between the bedroom window at first floor level in the side (south east) elevation and the side boundary.
- (ii) The en-suite windows (x2) in the side (south east) elevation shall be omitted.

Reason: To protect the amenities of the adjoining site and to provide for an adequate standard of residential amenity for the application dwelling.

2.3. **Planning Authority Reports**

The report of the area planner includes:

Rutland Place is a narrow laneway, some 4m in width including footpath. Car parking takes place in an informal manner up on the public footpath directly outside the ground floor windows of the dwellings.

The application drawings indicate an existing access door at ground level from the adjoining vacant site into the application dwelling. The applicant is proposing a replacement side door and 2 no. windows at ground level together with 3 no. windows at first floor level on the side/northern elevations on what appears to be the party boundary.

Conflicting site dimensions are indicated on the drawings submitted. The site location map indicates a site with a 4 metre width while the front elevation indicates a site width of 5.5m, the latter also indicates a side access gate into the adjoining vacant site and includes this within the extent of property. There are a number of windows and a door proposed on the boundary facing into the adjoining vacant site. Access to sunlight, daylight and natural ventilation to the rooms in the extensions would be contingent on the adjoining site remaining undeveloped. The initial

planning report recommended a request for further information and a further information request issued on two points: 1) discrepancies in the drawings and 2) windows in the party boundary.

The further information response received 14 June 2016 includes:

Revised proposals

First party has a long established right of way across the adjoining site to maintain his gable and drains. Shortly after this application was lodged, his side boundary wall contained a doorway and windows leading directly into the adjoining site and in common with many of the neighbouring property owners he has a key to the sites gates and used the entrance regularly. As the adjoining site owners would not keep their site clean he took it upon himself to clean up the adjoining site at his own expense. The rights of way are shown on the revised plan, these could be subject to revision and may not be 100%.

2.4. Other Technical Reports

Transport Infrastructure Ireland – 21 March 2016 – no submission.

Engineering Department Drainage Division – 29/6/16 – conditions.

2.5. Third Party Observation

A third party observation, has been read and noted, including:

Unauthorised extension removal has resulted in the adjoining premises being vulnerable to water ingress.

Proposal will result in overdevelopment of confined site.

Inadequate amenity space

Overbearing impact

Inaccuracies in drawings

Clarification of legal boundary is required.

Drainage details.

3.0 **Planning History**

Web1310/15 - permission granted for a first floor flat roof extension at 3 Thompsons Cottages.

Plan No 2032/13 - permission granted for demolition of an existing single storey extension within the rear yard and construction of a new two storey, flat roof extension to the rear of the 2 Thompsons Cottages.

Plan No 2344/04 - permission granted for second storey extension to the existing extension to the rear of the 8 Thompsons Cottages.

4.0 **Policy Context**

5.0 **Development Plan**

- 5.1.1. Dublin City Council Development Plan 2016-2022, adopted since the decision was made, is the operative plan. Relevant provisions include:

Zoning Z1: to protect, provide and improve residential amenities.

16.10.2 Residential Quality Standards – Houses - a standard of 5-8 sq m private open space per bedspace will normally be applied within the inner city.

16.10.12 Extensions and Alterations to Dwellings (See also Appendix 17)

The design of residential extensions should have regard to the amenities of adjoining properties and in particular the need for light and privacy. It is important to make sure that any extension does not unacceptably affect the amenities of neighbouring properties. This includes privacy, outlook, daylight and sunlight. It is advisable to discuss your proposal with your neighbours prior to submitting a planning application.

Appendix 17 Guidelines for Residential Extensions

17.2 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.

17.4 Privacy

Extensions should not result in any significant loss of privacy to the residents of adjoining properties. Generally, windows overlooking adjoining properties (such as in a side wall) should be avoided. Where essential, the size of such windows should be kept as small as possible and consideration should be given to the use of high-level windows and/or the use of obscure glazing where the window serves a bathroom or landing.

6.0 The Appeal

6.1. Grounds of Appeal

The third party appeal has been submitted by Keller Architects on behalf of Mr David Colgan of No 21 Rutland Place North.

The grounds of appeal can be summarised as follows:

- Overdevelopment – 100% site coverage.
- Contrary to development plan standards.
- Substandard provision of private amenity space – minimum requirement of 15m² per bed space – 60m² required, none provided.
- Overshadowing – blocking morning light to rear bedroom and kitchen window by first floor extension. Third party is aware of the impact as an unauthorised extension was in place and has been removed.
- Inaccuracies in original submission. – door to adjoining property has been blocked up; documentation incorrectly states site coverage as

63%; pedestrian gate to Rutland Place North is no longer there; elevations assert the boundary extends to include the pedestrian gate the plans do not.

- Letter with further information response is misleading in stating that first party had cleaned up the debris and builder's rubble in the adjoining plot; in fact the debris and builders rubble was created by the first party constructing unauthorised development and its subsequent demolition.
- Incorporates access and windows onto lands which have not been indicated as being in ownership of first party. PA should have required clarification of title.
- Drainage system is prone to blocking and requires frequent cleaning and maintenance. Only indicative layout provided. Details should be requested as works to the drainage system will have a direct impact on neighbouring properties.
- The amenities and services to support the increase in dwelling area are not available.
- Third party's property still suffers the water ingress issues through scars of the demolition works and will suffer further from the development. The fabric of these properties do not respond well to the vibrations and activities associated with intensive construction and demolition.
- Photographs are attached to the grounds of appeal.

6.2. **Observer**

Smith Associates Architects Surveyors have made an observation (26/8/2016) on behalf of Cuisle Properties, owners of the vacant site 23/24 Rutland Place North abutting the subject site.

The observation includes:

Allegations of trespass.

Photographs taken in 2014 showing that there was no access door to Rutland Place North at that time; contrary to what is shown in the application.

Drawings indicating that the property extends beyond the dwelling and the vents windows and door onto the adjoining property.

Cuisle Properties made a planning application in 2014 which was refused. A further application is about to be made. The application clearly showed that the development site abuts the dwelling.

The proposed windows and door would diminish the Cuisle Properties property and be a fire hazard.

First party is falsely claiming right to light.

Observer includes allegations regarding activities on the site.

The First party's claims regarding neighbouring properties right to access the site is untrue.

Drains serving properties adjoining will be considered, there is no obvious evidence of drainage from No 22, drawing of existing services is enclosed.

6.3. **Planning Authority Response**

The planning authority has responded to the grounds of appeal referring the Board to the planner's report and requesting the Board to uphold its decision.

6.4. Other Party Responses

Architectural Construction Technology, on behalf of the first party, has responded to the grounds of appeal (31/8/16) stating that:

The first party applied for a first floor rear bedroom and being unsure of the exact planning status of the existing ground floor extension, he sought retention for that.

He has owned the property for 40+ years. Because he was attempting to let or sell the property he constructed a first floor extension without the benefit of planning permission. The property has been unused for a number of years and was not in a habitable condition. In response to an enforcement notice he had the first floor removed.

The ground floor structure was not removed. Architectural Construction Technology advised that it be removed because it was so poorly constructed.

The pedestrian gate in the adjoining wall was bricked up as a means of the adjoining property owner securing his site from anti social elements.

The first party has decided to sell the property. Prospective purchasers have indicated that a single bedroomed house is of no use. A first floor bedroom extension has been allowed on properties in the immediate vicinity. Without a first floor extension it is uneconomical to restore it to habitable condition. The property was a single bedroom, single reception with outside toilet. All have ground floor extensions with 100% site coverage. Many have now a second storey extension. An error was made in the application with ref. to the site coverage. The first party has a right of access and egress to maintain his property and his drains. The drains have been blocked up, but a number of years ago a revised drainage arrangement was put in and these properties benefit from the work. They do maintain their right to access and egress to keep these clean and clear.

The first party has also an acquired right to light and windows in the gable wall would not have diminished the ability of the adjoining site owners to develop their site. The

toilet windows were for ventilation and light and any future development is not going to be attached to this property. The omission of these windows should not have been conditioned.

The roof is hipped to maximise the available light to the neighbour and first party has removed the bush that was growing on the neighbouring roof and blocking light.

The proposed extension would be similar to others in the vicinity. Due to the undeveloped nature of the adjoining site it would have little impact on its neighbours. The only noticeable loss of light would be very early, and by 9 am it would not be noticeable. Development on the adjoining site is likely to be an extension of the terrace.

There are a number of properties with access or windows or ventilation directly into the commercial site. A number, including the subject site, have long established rights of way across the commercial site.

The proposed development will bring the house into residential use and remove the unsocial behaviour, including squatting, that has led to complaints to the Gardai. Both the local authority and the first party have cleaned up the disused commercial site over the years to maintain their rights of way, keep the drains clean and control dumping, as the present owners seem disinterested in the site.

6.5. Further Responses

Keller Architects on behalf of the third party have responded (23/9/2016) to the observation, stating that the third party is in full agreement with the observation.

Architectural Construction Technology, on behalf of the first party, has responded to the grounds of appeal (3/10/2016) stating that: the first party has owned the property since 1973 and it has been in his family since 1963.

He removed the first floor extension in response to an enforcement notice but was not required to remove the ground floor extension because it had stood for some time. It was rebuilt by that builder but due to the enforcement notice never finished.

The owner of the vacant site has alleged that the first party has encroached when this is not true. No party walls have been removed. No gates were constructed. The first party has had access for the last 40 years through the main gates. The new owners are trying to prevent this and have removed the shared lock and replaced it which denies those with rights of way and rights of access and drainage, access to the site.

The adjoining developer intends to lodge a planning application that shows the proposed development abutting the first party's property. That will not give them the right to do so. The former cottages have been gone a long time and any rights that were associated with them have long lapsed.

In response to the law firm's letter, that no rights of way are drawn on the title deeds, the properties are unregistered lands. The rights of way, access, drainage and the rights to light are acquired since 1899 and have been in regular use over that time. The site was commercial and neighbours were allowed to put in doors on their property that gave access to the commercial site, and windows and ventilation. Some were given keys for the wicket gate and some for the main gate. The non-inclusion of these rights on the title deeds is of no consequence. There is no automatic right for development on the adjoining property to attach to the third party's gable.

The first party was prepared to relinquish his right to enter via the main gate in favour of through the side gate/door; only the right of way that permitted him to maintain his property plus his established rights to light and access and egress. He will now use the main gate.

7.0 Assessment

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

- Drawing Inaccuracies
- Site coverage
- Legal Issues
- Windows, Vents and Doorway in Boundary
- Impact on Adjoining Dwelling
- Appropriate Assessment

7.2. Drawing Inaccuracies

The first party has explained the reason for the conflicts between drawings, which indicate on elevation a property which extends to include a yard door along the street (now blocked up) and on plan the dwelling footprint outlined as the site area; also the discrepancy between the stated ground floor area (per application form) 28m² and the site area 36m² and the statement that the site coverage is 64%; later stated to be 100%. The reason for these conflicts is due to the fact that the first party was prepared to relinquish certain rights in favour of extending his property.

There are other inaccuracies in the drawings including the gable elevations. The eastern gable elevation shows a doorway which no longer exists (but is in dispute). The western gable elevation also shows a doorway. This inspector was unable to enter the downstairs area because acrow props were in place throughout to support the ceiling. It is unlikely that this door exists because it would access the adjoining dwelling. Neither does the elevation represent the gable of the terrace block.

7.3. Site coverage

The site coverage of 100% has been achieved by the erection of a rear ground floor extension which requires, as part of the subject appeal, planning permission for its retention.

This 100% site coverage means that there is no private amenity space and no area at ground level for outdoor storage of refuse.

The Development Plan states that a standard of 5-8 sq m private open space per bedspace will normally be applied in relation to housing within the inner city.

While it would be difficult to apply such a standard to the subject site, even 8 sq m of private open space would be difficult to achieve, the unavailability of any private open space is unacceptable and would result in substandard accommodation; and this is a reason to refuse permission.

7.4. Legal Issues

Issues have been raised regarding whether or not rights have been established over the adjoining vacant property. These are not matters for the Board to determine.

7.5. Windows, Vents and Doorway in the Boundary

The drawings show an existing entrance doorway in the common boundary with the adjoining vacant site. A photograph has been supplied by the first party, to the planning authority, in response to a further information request, which shows this elevation. It appears from the photograph that the doorway was under construction when the photograph was taken. The date of the photograph is not given.

Photographs have been supplied by the observer, to the Board, showing this doorway closed up.

The drawings of the proposed development show a doorway, several windows and vents in the common boundary with the adjoining vacant site to the side and rear of the dwelling. Notwithstanding the legal issues, the placement of a door, windows and

vents in the boundary is in my opinion inappropriate since these features are required to provide access, light and ventilation, but being in a boundary their use cannot be assured; in addition the development of unprotected areas in boundaries gives rise to concerns regarding the spread of fire. In my opinion the provision of a door, windows and vents in the boundary represents substandard development and this is a reason to refuse permission

8.0 Impact on Adjoining Dwelling

The third party states that the first floor extension would blocking the morning light to the rear bedroom and kitchen window of his property. The third party is aware of the impact as an unauthorised extension was in place and has been removed. The subject site is north east of the adjoining property and the extension would have some impact on daylight but not on sunlight. These properties are small and extensions are required to provide an acceptable level of accommodation. In my opinion this is not a reason to refuse permission.

The third party states that the drainage system is prone to blocking and requires frequent cleaning and maintenance and that only indicative layout has been provided. The third party states that details should be requested as works to the drainage system will have a direct impact on neighbouring properties. In my opinion, if 100% site coverage were to be considered acceptable this issue would require to be resolved.

8.1. Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment 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 a European site.

9.0 Reasons and Considerations/ Reasons

Having regard to the provisions of the Development Plan including the requirement to provide private open space and other basic residential amenities, it is considered that the proposed development would comprise substandard accommodation by failing to provide any private open space at ground level, and by failing to ensure that other basic residential amenities such as natural light and ventilation would be available within parts of the development and accordingly the proposed development would be contrary to the proper planning and sustainable development of the area.

Planning Inspector

16 November 2016

Appendices

Appendix 1 Map and Photographs

Appendix 2 Extracts from the Dublin City Council Development Plan 2016 – 2022