



An
Bord
Pleanála

Inspector's Report PL06F.247657

Development	2-Storey Extension to Side and Rear with single storey annex incorporating covered access to rear.
Location	20 The Green, Melrose Park, Kinsealy, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F16B/0239
Applicant(s)	Greg and Samantha Hughes
Type of Application	Permission
Planning Authority Decision	Granted
Type of Appeal	Third Party
Appellant(s)	Patricia O'Neill
Observer(s)	None
Date of Site Inspection	16 th February 2017
Inspector	L. W. Howard

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1.0 Site Location and Description

- 1.1.1. The stated 0.0185ha application site is located within Melrose Park, an established residential area of Kinsealy.
- 1.1.2. The site is located at No.20 The Green, opposite an area of open space, and in close proximity to the neighbourhood centre.
- 1.1.3. The site comprises a 2-storey semi-detached, hipped roof dwelling which is constructed of brick at ground floor on the front elevation and render elsewhere.
- 1.1.4. A conservatory exists to the rear of the dwelling.
- 1.1.5. Rear garden access is via a 1m wide access along the southern side.
- 1.1.6. The adjoining property to the south, No.22 The Green, has a similar 1m wide side access.

2.0 Proposed Development

- 2.1. Demolition of the conservatory to the rear of the existing dwelling.
- 2.2. Construction of a part single, part 2-storey extension to the rear, which is to wrap around to the side of the dwelling.
- 2.3. The proposed extension will project 3m from the rear elevation of the existing dwelling, and will be single storey in height adjacent to the northern boundary with No.18 The Green.
- 2.4. The first floor element to be set back 3.2m from the northern boundary, and will adjoin the boundary to the south with No.22 The Green. This element will also wrap around the side of the dwelling, but will be set back 5.8m from the front elevation of the dwelling.
- 2.5. Rear garden access to be retained at ground floor through provision of a covered access way.
- 2.6. The single storey extension to be 3.8m high, with the 2-storey extension element 6.3m high.
- 2.7. Parapets walls proposed along each site boundary as follows -
 - 3.8m high along the northern boundary, and

- 5.7m along the southern boundary

2.8. Materials proposed to match the existing dwelling.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Decision to grant planning permission, subject to 7no. Conditions

3.1.2. Having regard to the 3rd party grounds of appeal, the following are considered noteworthy :

C2 Entire premises to be used as a single dwelling unit.

C3 External finishes to harmonise in colour and texture with the existing house.

C5 Specification of construction hours of operation.

C6 Bathroom / en-suite windows to be fitted and maintained with obscure glass.

C7 Non-compliant attic floor space shall not be used for human habitation

3.2. Planning Authority Reports

3.2.1. Planning Reports

The key planning issues considered as follows -

Zoning Objective / Development Plan Objectives

- the site is designated with the RS Zoning Objective - “provide for residential development and protect and improve residential amenity”.
- the proposed extension development is acceptable in principle

Integration and Visual and Residential Amenity Impact

- noting that the proposed extension will be set back 5.8m from the front elevation of the dwelling, and that the ridge height will be 1.2m below the existing ridge height, consider the proposed extension –
 - will not be visually prominent or obtrusive in the streetscape, and
 - will not adversely impact on the visual amenity enjoyed locally.
- Having regard to -
 - the orientation of the properties in relation to the path of the sun, and

- the single storey nature of development adjacent the sites northern boundary,
no loss of natural light to adjoining properties, will result.
- Given the limited depth of the proposed extension, wrapping around the existing house, the development will not be overbearing or oppressive.
- the extension will wrap around the side of the dwelling.
- No windows exist in the side elevation of the neighbouring dwelling which would be impacted. An obscure glazed window noted, which serves the landing.
- Note 3rd party concerns regarding encroachment by proposed extension of adjoining properties. However, given the provision of parapet walls, this is not likely.
- Clarify the issue of encroachment or over-sailing as a civil matter. Notwithstanding, applicant to be advised that in the event of such, the consent of the adjoining property owner is required.

Conclusion

- No negative impact on visual or residential amenity will result.
- The proposed development is in accordance with the proper planning and sustainable development of the area
- Recommend permission be granted, subject to Conditions

3.2.2. **Other Technical Reports**

None

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

3.4.1. Two letters of objection received.

3.4.2. The issues argued include -

- out of character with the area

- overshadowing of adjoining properties.
- overbearing and oppressive
- concern regarding maintenance of side walls due to lack of access
- concern the development will encroach on neighbouring properties
- impact on property values

4.0 Planning History

None

5.0 Policy Context

5.1. Development Plan

5.1.1. Fingal Co. Development Plan (2017-2023)

Relevant provisions incl. –

Ch3 Placemaking

3.4 Sustainable Design and Standards

Extensions to Dwellings

Objective PM46 Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

Private Open Space – Residential Units

Objective PM65 Ensure all areas of private open space have an adequate level of privacy for residents through the minimisation of overlooking and the provision of screening arrangements.

Ch11 Land Use Zoning Objectives

Zoning Objective “RS” Residential

Objective: Provide for residential development and protect and improve residential amenity.

Vision: Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

Use Classes related to Zoning Objective

Permitted in Principle incl. – ‘Residential’

(see Map – Fingal Co. Dev. Plan 2017 Land Use Zoning Objectives).

Ch12 Development Management Standards

12.4 Design Criteria for Residential Development

Separation Distances – Between Sides of Houses

Objectives DMS28 and DMS29 Ensure a separation distance of at least 2.3m is provided between the side walls of detached, semi-detached and end of terrace units, in order to allow for adequate maintenance and access.

12.7 Open Space

Private Open Space (usually to the rear of the front building line of the house).

Objective DMS87 Ensure a min. open space provision for dwelling houses (exclusive of car parking area) as follows:
3-bedroom houses or less - a min. of 60sq.m. of private open space located behind the front building line of the house

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Clarify 3rd party appellant is not opposed in principle to the applicants proposed home extension.

Rather, as proposed considers this as inappropriate development at this location, with consequent loss of her existing residential amenity for the following reasons –

6.1.2. Zoning – Residential Amenity

Proposed extension does not comply with the RS Zoning Objective, as the appellant would lose existing residential amenity, consequent of the negative impacts set out below.

6.1.3. Separation Distance

- Objective RD19 requires a separation distance of at least 2.3m between the side walls of houses.
- The proposed extension intrudes into the 2.3m space, reducing it to less than one metre for the length of the extension, contrary to Objective RD19.

6.1.4. Visual Obtrusiveness

At 5.5m deep, extending c.3m beyond the rear building line and c.5.7m high, the proposed extension will be visually obtrusive when viewed from the 3rd party appellant's rear ground floor windows and private gardens, detracting from existing residential amenity.

6.1.5. Encroachment

- Clarify the existing boundary wall is entirely on the appellant's property (No.22 The Green), where it runs between the gables of the two houses, and it reverts to being a party wall for the remainder of the boundary between the front and back gardens.
- Being constructed on the appellant's side of the party boundary, and wholly owned by the appellant, the existing boundary wall cannot be interfered with by the applicant, without permission from the appellant. Similarly, consent from the appellant is also required regarding the remaining party wall. The appellant is not willing to allow the boundary walls to be interfered with.
- The proposed extension involves extension of the footing for the proposed new wall under the appellant's property (No.22 The Green). In addition to the required consent, these works will interfere with existing piped and cabled services, and damage the appellants existing decorative paving and planting. The consequence will be serious disruption to the appellant's property and amenities.
- Having regard to the other gable wall abutting No.18 The Green, point out the applicant's proposal for that gable wall and offset footing to be contained

entirely within the application site. Why was this approach not followed on the appellant's side at No.22 The Green.

- This encroachment should have been addressed by the Planning Authority by way of a further information request for clarity. Rather, the Planning Authority decided to grant planning permission for a development, partially on property not in the ownership of the applicant.
- Whereas the applicants stated in the application documentation that they are the legal owners of the application site, it is clear from the Drawings submitted that part of the site to be developed is not in their ownership.

6.1.6. Conclusion

- The proposed development does not comply with the 'RS' Zoning Objective, nor Policy Objective RD19.
- The proposed development will negatively impact the 3rd party appellant's established residential amenities by way of –
 - visual obtrusion,
 - unauthorised demolition of the existing party boundary wall, and
 - encroachment on her property.
- Notwithstanding the above, appellant is willing to accept a decision by the Board to grant permission, subject to a Condition that –

“the existing boundary wall between her property and the applicant's property is not interfered with and that the proposed development (including the foundation for any proposed wall) is contained entirely on the applicant's side of the boundary walls”.

6.2. **Applicants Response**

- 6.2.1. Neither of the applicants neighbours expressed concerns regarding the position of the walls to the extension.
- 6.2.2. Clarify that the wall dividing the shared access was erected, when the applicant purchased the property. The applicant was unaware the wall had been erected entirely on her neighbours side of the boundary line.

6.2.3. Pre-lodgement discussion with Ms. Patricia O'Neill informed that the proposed wall was intended as a party wall offering the right of support for any future extension on her side.

6.2.4. Revised drawings of the proposed extension submitted, with the wall abutting No.22 The Green (ie. Ms. Patricia Green) within the confines of the application site. Confirm applicant met with the 3rd party appellant, to reconcile her objection to the location of the proposed wall.

6.2.5. Ms. Patricia O'Neill confirmed her objection to the proposed development, contrary to her statement in the last paragraph of her Objection submission.

6.2.6. Zoning - Residential Amenity

- The Fingal County Development Plan 2011-2017 encourages imaginative solutions that overcome overlooking concerns.
- Having regard to the following -
 - that overlooking does not arise in this instance,
 - the rear of the application site faces west, and
 - the proposed extension is to the north,the threat of loss of sunlight to the rear of the 3rd party appellant's property is not an issue.

6.2.7. Separation Distance

- Objective RD19 "is an aspiration and clearly relates to new houses".
- S.I. No.600 of 2001, in Schedule 2, Part 1, Class 1(3), exempts any above ground floor extension greater than 2m from any party boundary.

6.2.8. Visual Obtrusiveness

- the proposed extension side wall will only impact on the view from the kitchen window (ie. it can only be seen from 15% of the total floor area of the rear room).
- the impact on the view from the rear garden is not significantly greater than the impact of the outline of the original house.

6.2.9. Encroachment

- the applicants were unaware of the position of the boundary wall to No.22.
- they have taken every attempt to resolve this issue -

- the drawings have been revised to reflect retention of the garden wall in the proposal, and
- a meeting held between the applicant and the 3rd party appellant, to explain the situation.
- Confirm the appellant's reiteration of her objection to the proposed development

6.2.10. Conclusion

- The Planning Authority's decision to grant planning permission, is indicative of substantial compliance with the relevant policies within the Fingal County Development Plan 2011-2017.
- The applicant's revised layout satisfies the 3rd party appellant expressed preparedness to accept a decision to grant planning permission, "subject to a Condition that the existing boundary wall between her property and the applicant's property is not interfered with, and the proposed development (including the foundations of any proposed wall) is contained entirely on the applicant's side of the boundary walls.

6.3. **Planning Authority Response**

- 6.3.1. The proposed development will not detract from the visual amenity of the surrounding area.
- 6.3.2. Proposed development will not detract from adjoining residential amenity.
- 6.3.3. Request the Board uphold the decision of the Planning Authority
- 6.3.4. Planning Authority determined the application to be exempt from Development Contributions

6.4. **Observations**

- 6.4.1. None

6.5. **Further Responses to the Applicants Response**

6.5.1. **Planning Authority**

- Stated no further comment.

6.5.2. **3rd Party Appellant**

- Affirm conclusion that the proposed development be refused planning permission as it does not comply with the RS Zoning Objective, or with Objective RD19 – “Separation Distances” of the County Development Plan 2011.
- The proposed development will seriously diminish the amenities and value of the 3rd party appellant’s adjacent property, setting an undesirable precedent for future similar development.
- Notwithstanding previous apparent concessions stated, clarify that the 3rd party appellant emphasises that from the start, she has been opposed to the proposed extension. Further, she is not prepared to allow the applicants access over her property to enable construction works for the proposed extension, or for future maintenance thereof once completed.
- Submit alternative site layout and design proposal which would satisfactorily address the 3rd party appellants concerns.

7.0 **Assessment**

7.1. I have examined the file and available planning history, considered the prevailing local and national policies, inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The relevant planning issues relate to :

- Principle and Location of the proposed development
- Visual Amenity Impact / Streetscape
- Residential Amenity Impact
- Site Boundary : Encroachment / Land – Legal Issues
- Appropriate Assessment.

7.2. **Principle and Location of the proposed development**

7.2.1. The site is zoned “RS – Residential”, with the objective to provide for residential development and protect and improve residential amenity. The applicable zoning matrix designates residential land use as being permitted in principle within the zone. The “RS – Residential” zoning objective seeks to ensure that any new development

in existing areas would have a minimal impact on and enhance existing residential amenity.

7.3. Visual Amenity Impact / Streetscape

- 7.3.1. I have taken note of the established, contextual scale and pattern of residential development along The Green estate road, passed the application site. What is clear in my view, is that as one moves along the road, no reasonable visibility is possible at all, of the rear of any of the houses, and including and specifically the rear of No.20 The Green.
- 7.3.2. In itself I believe that as illustrated in the architectural drawings submitted, the proposed subordination of the domestic extension to the existing dwellinghouse, set back c.5.8m from the front elevation of the existing dwelling, and with the ridge height c.1.2m below the existing ridge height, together with consistency in the use of materials, colouring and finishes, will ensure the modest increase to the rear elevation width will not be obviously noticeable from The Green estate road frontage.
- 7.3.3. From the rear, intervisibility is restricted to the rear elevations and rear yards / gardens of surrounding properties, of which there are only few and which appear compliant with County Development 2017 Standards. In my view, having regard to the design references above, the proposed extension will not be disproportionately visually prominent or obtrusive to adjacent and nearby residents, when viewed from the rear.
- 7.3.4. Having regard to the architectural design details submitted, the proposed domestic 2-storey extension to the side and rear with single storey annex incorporating covered access to the rear, all at No.20 The Green would have no disproportionate impact on the established character & streetscape of The Green generally, and of adjacent properties specifically, and subject to relevant Conditions, would be in accordance with the proper planning and sustainable development of the area.

7.4. Residential Amenity Impact

- 7.4.1. Having regard to all of the information available, and prioritising the applicant's site layout plan and 'contextual elevations' Drawing No. PP2A Rev A, I am of the view that the proposed domestic side and rear extension located at No.20 The Green, will have no serious, or disproportionate negative impact on the prevailing residential

amenity in the area. In this regard, I have given consideration to potential threats to residential amenity as follows :

- Visual Obtrusion : see as discussed at 7.3 above.
- Loss of Natural Light or Overshadowing : Application site located to the north of the 3rd party appellants property. The single storey element of the proposed domestic extension abuts No.18, adjacent to the north, reasonably mitigating threat of overshadowing.
- Overlooking / Privacy Loss : No window openings proposed in S-facing elevation wall of the proposed extension. Adequate separation distances are retained from adjacent property to the rear, in compliance with Development Standards.
- Noise : No increase at all above that currently characterising domestic residential use of the application site, must reasonably be anticipated.
- Private Amenity / Leisure Space : Both adequate and usable private amenity space has been retained to the rear of the application site, nor will serious negative impacts result on adjacent rear domestic amenity spaces, in compliance with Objectives PM65 and DMS87.
- Separation Distances between Side Walls of Houses : Adequate separation distances are retained in compliance with Objectives DMS28 and DMS29, enabling for adequate maintenance and access.
- In Situ Views / Outlooks : No designated views exist with respect to the collection of domestic dwellinghouses comprising The Green Estate.
- On-Site Car Parking : Adequate onsite car parking space exists, in compliance with County Development Plan 2017 Standards. No increased need for such space is generated by the proposed development.
- Access and Traffic Safety : The existing dwellinghouse is already served with access onto the local estate road. No additional traffic generation will result from the proposed development.

7.4.2. I do acknowledge the potential for negative impact of construction activity on contextual residential amenity locally, whilst site works and construction activity are on the go. However, I consider that these impacts are only temporary, are to

facilitate the completion of the proposed development, and certainly cannot be regarded as unique to this development. Further, I consider that given these impacts are predictable and to be expected, they can be properly and appropriately minimised and mitigated by the attachment of appropriate supplementary Conditions to a grant of permission, should the Board be mindful to grant permission, and deem such mitigation of negative impact necessary.

7.4.3. Accordingly, I believe the proposed domestic side and rear extension is satisfactorily compliant with the RS Zoning Objective, and accordingly would be in accordance with the proper planning and sustainable development of the area.

7.5. Site Boundary : Encroachment / Land – Legal Issues

7.5.1. I have taken careful note of the arguments made by the 3rd party appellants, in respect of land / legal matters relating to both existing domestic residential development on the application site, and that consequent of the residential extension development, as proposed. I have also had regard to the response by the applicants clarifying that the wall dividing the shared access was erected, when the applicants purchased their property. I note the applicants clarification that they were unaware the wall had been erected entirely on her neighbours side of the boundary line.

7.5.2. However, having regard to the arguments raised against the proposed development by the 3rd party appellant, I have had regard to the application for planning permission on its planning merits alone, as set out in the above discussions. I am inclined to the view that any decision on the planning application does not purport to determine the legal interests held by the applicants, or any other interested party in relation to boundary demarcation in this instance.

I would also draw attention to Section 34(13) of the Planning and Development Act, 2000 as amended, which relates as follows: “A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development”. In this regard, I reference the explanatory notes which read as follows – “This subsection ... makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate”. Consequently, I understand that any legal obligations on the applicants, to ensure that the legality of landownership and

user privileges enjoyed by the 3rd party appellant in particular are not compromised, are covered.

- 7.5.3. Notwithstanding the substantive objections argued by the 3rd party appellant against the proposed development, I note the 3rd party appellant's expressed willingness initially, to accept a decision by the Board to grant permission, subject to a Condition being attached ensuring that the existing boundary wall between her property and the application site is not interfered with and that the proposed development (including the foundation for any proposed wall) is contained entirely on the applicants side of the boundary wall.
- 7.5.4. However, contrary to this apparent stated concession contained within the 3rd party appeal, the 3rd party appellant in her response submission to the applicants' response to the 3rd party appeal, emphasises that from the start, she has been opposed to the proposed extension. Further, that she is not prepared to allow the applicants access over her property to enable construction works for the proposed extension, or for future maintenance thereof once completed.
- 7.5.5. In response, I affirm reference to Section 34(13) of the Planning and Development Act, 2000 as amended. I understand that any legal obligations on the applicants, to ensure that the legality of landownership and user privileges enjoyed by the 3rd party appellant in particular are not compromised, are covered.

I have had regard to the revised plans and drawings of the proposed extension (ie. Drawings No.PP3 – Rev A December 2016 and PP5 – Rev A December 2016), submitted by the applicants as part of their response submission to the 3rd party appeal. Consistent with the proposed treatment of the north-facing gable wall of the proposed extension where it abuts No.18 The Green, whereby the single storey gable wall and offset footing are contained entirely within the application site, these revised drawings illustrate the outer south-facing walls abutting No.22 The Green (ie. the 3rd party appellant), also within the confines of the application site. I have had regard to these revised drawings, particularly Sections BB and CC of Drawing No.PP5 – Rev A December 2016, received by the Board date stamped the 12th December 2016, in response to the 3rd party appeal as reasonable and as constructively addressing the 3rd party appellants concerns. Compliance by the applicants in this regard can satisfactorily be achieved by way of further supplementary Condition.

7.5.6. Accordingly, I do not believe these arguments by the 3rd party appellant against the proposed development to be reasonable and substantive grounds for refusal.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and modest scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any 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 a European site.

8.0 **Recommendation**

8.1. I recommend that planning permission be Granted for the Reasons and Considerations set out below.

9.0 **Reasons and Considerations**

9.1. Having regard to the Zoning Objective "RS" for the area and the pattern of residential development in the area, it is considered that, subject to compliance with Conditions set out below, the proposed development would be in accordance with the relevant provisions of the Fingal County Development Plan 2017-2023, would not seriously injure the amenities of the Melrose Park neighbourhood, or of the property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and by the further plans and particulars received by An Board Pleanala on the 12th day of December 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the

planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The existing dwelling and proposed extension shall be jointly occupied as a single residential unit, and the extension shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason : In the interest of clarity and to restrict the use of the extension in the interest of residential amenity.

3. The external finishes of the proposed extension, including roof tiles / slates, shall be the same as those of the existing dwelling in respect of colour and texture. Samples of the proposed materials shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.

Reason : In the interest of visual amenity.

4. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including :

- hours of working,
- noise management measures,
- measures to prevent and mitigate the spillage or deposit of debris, soil or other material on the adjoining public road network, and
- off-site disposal of construction/demolition waste.

The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason : In the interests of public health and safety and residential amenity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason : In the interest of public health.

6. All bathroom and en-suite windows shall be fitted and permanently maintained with obscure glass.

Reason : To prevent overlooking of adjoining residential property.

7. Any attic floor space which does not comply with Building Regulations in relation to Habitable Standards shall not be used for human habitation.

Reason : To clarify the extent of the permission.

8. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwellinghouse, without a prior grant of planning permission.

Reason : In the interest of residential and visual amenity, and in order to ensure that a reasonable amount of private open space is provided for the benefit of the occupants of the proposed dwelling.

9. No part of the development including fascia boards, soffits, gutters, drainpipes or other rainwater goods, together with boundary walls, shall at any time overhang or encroach onto the neighbouring property.

Reason : In the interest of orderly development.

L. W. Howard
Planning Inspector

10th March 2017