



An
Bord
Pleanála

Inspector's Report PL 06D.248239

Development	Retention of alterations to house
Location	94 Stillorgan Grove, Blackrock, County Dublin.
Planning Authority	Dún Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D16A/0719
Applicant(s)	Weng & Sheila Lee
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	First & Third Party
Appellant(s)	Weng & Sheila Lee John Waters
Observer(s)	Kevin & Marta O'Boyle
Date of Site Inspection	26 th June, 2017
Inspector	Kevin Moore

1.0 Site Location and Description

1.1 No. 94 Stillorgan Grove is a recently constructed two-storey detached house in the residential suburb of Stillorgan, County Dublin, located midway along a short cul-de-sac. It is bounded to the front by a high random rubble boundary wall and there is a cobbled and landscaped forecourt and enclosed back garden. An open space area lies on the opposite side of the estate road. The house is flanked by detached two-storey houses, occupied by the third party appellant and the observers.

2.0 Proposed Development

2.1. The proposed development would consist of the retention of alterations to a house approved under ABP Ref. PL06D.244714, including alterations to the pitched roof to the side, the widening of the vehicular entrance to include the provision of a pedestrian gateway to the side and associated piers, and side fences in the front garden area.

2.2. The specific changes for retention has resulted in:

- The internal dimensions of the room under the altered pitched roof changing from 6610mm to 6900mm and the line of the roof to the rear being out of position by 290mm,
- A parapet wall at the edge of the pitched roof constructed to avoid reusing the existing gutter to the side,
- Higher boundary fencing to the side of the front garden, and
- The vehicular entrance widened to 4000mm from 3000mm to facilitate a pedestrian gateway, with the gateway bounded by two gate piers.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 8 no. conditions on 1st March 2017. Condition no. 3 required reduction in width to the

vehicular entrance to a maximum width of 3.5m, the removal of 4.5m length of parapet wall along the northern side boundary where it rises above the level of the front gutter and soffit and the associated cladding/flashing, and the reduction in height of the timber fence by 0.52m between the front elevation of the house and the existing bicycle shed.

3.2. Planning Authority Reports

Planning Reports

The Planner noted the observations made, the site's planning history, the reports received, and development plan provisions. It was noted that, further to site visits, a number of structures and details were either not shown or were not accurately shown on the submitted drawings and these were scheduled. A request for further information was recommended relating to the clarification of the status and use of a range of structures on the site and on drainage details.

Other Technical Reports

The Drainage Engineer had no objection to the development.

The Transportation Planning Engineer had no objection to the proposal subject to conditions, including the requirement to reduce the vehicular entrance width to a maximum width of 3.5m.

A request for further information was issued in accordance with the Planner's recommendation on 25th November 2016 and a response to this request was received by the planning authority on 2nd February 2017. This included revisions to the application to include the retention of a shed/store and associated lobby to the rear and a bicycle shed to the front.

Following this submission, the reports to the planning authority were as follows:

The Drainage Engineer had no objection subject to a condition.

The Transportation Planning Engineer had no objection subject to conditions.

The Planner considered the store / shed to be acceptable with regard to its modest height and size and it was submitted that they are not living spaces or extensions to the house. The family room to the rear was also considered acceptable. It was considered that the bicycle shed also formed part of the retention permission and was also regarded as being acceptable. It was considered that the parapet wall above the level of the adjacent gutter/eaves line on the north boundary should be removed by condition in the interest of residential and visual amenity and this should include the associated vertical and horizontal cladding/flashing panel. It was also considered that the vehicular entrance width be reduced in accordance with the Transportation Engineer's recommendation and that timber fencing along the northern flank between the front elevation of the house and the bicycle shed be reduced in height by 0.52m to reduce the visual impact. A grant of permission was recommended subject to conditions.

3.3. Third Party Observations

Submissions were made to the planning authority by Kevin and Marta O'Boyle and John Waters. The third party appeal and observation reflect the principal planning concerns raised.

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4.0 Planning History

ABP Ref. PL 06D.244714

Permission was granted by the Board for extensions to a house, provision of a basement and works to elevations and roofs in 2015.

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5.0 Policy Context

5.1. Dún Laoghaire-Rathdown County Development Plan 2016-2022

Zoning

The site is zoned 'A' with the objective "To protect and/or improve residential amenity."

6.0 The Appeals

6.1. Third Party Appeal by John Waters

The appellant resides at 96 Stillorgan Grove to the north of the appeal site. The grounds of the appeal may be summarised as follows:

- The development contravenes Conditions 1, 2, 4 and 6 of Planning Permission D14B/0383.
- The development oversails Nos. 92 and 96 Stillorgan Grove contrary to Condition 6 of the Board's previous decision. Drawings and plans submitted are inaccurate showing the 'as constructed' development.
- There are deficiencies relating to the further information submission, including height and length dimensions and surface water drainage details.
- The Planner's assessment was grossly deficient in relation to site inspection, the habitable use of the store and shed, addressing the surface water arrangements, oversailing of adjoining property, the lack of public notices relating to the retention of the shed/store and bicycle shed, and the inadequacy of public notices relating to the extent of the development.
- The store, shed and surface water drainage arrangements represented significant additional information. The inadequate description of the development could warrant the application invalid.
- The conditions attached with the planning authority's decision are defective, deficient and unenforceable and deprive the appellant of a right to reply to proposed changes.

The appellant's submission to the planning authority is also attached to the appeal submission.

6.2 First Party Appeal by Weng and Sheila Lee

The grounds of the first party appeal relate to the attachment of Condition 3(a) and (c) and may be synthesised as follows:

Condition 3(a)

- The Development Plan provisions (Section 8.2.4.9) provide the maximum width of an entrance at a dwelling is 3.5m in the general case. This ought not be interpreted to mean a wider entrance cannot be allowed in some cases, particularly when there is no real planning basis for refusing permission.
- Prior to renovation works there were two existing accesses in the front boundary, each 2.25m wide.
- The overall gate width is 4m. The 0.9m wide pedestrian gate opens independently of the 3.1m entrance gate.
- There is no objective justification for restricting the width to 3.5m. The additional width is extremely helpful facilitating turning movements.
- It is not clear from the reason for the condition how it applies to the restricted width. There is no amenity basis for the restriction.
- There is no traffic safety or public safety-related justification to Condition 3(a).

Condition 3(c)

- The planning purpose of this condition is unclear. No rationale is provided in the Planner's report to justify the reduction in height of the timber fence. The specified 1.2m height is arbitrary and does not take account of the particular circumstances of the site.
- The existing fence provides a degree of visual screening and separation between the front gardens of Nos. 94 and 96 and safeguards the privacy of both.

- The bicycle shed is similar in height to the timber fence and the fence would look visually incongruent between the shed and the house.
- There is existing planting over 1.2m high at No. 96 along this boundary and thus there is no objective planning justification for reducing the height of the fence.

6.3 **Planning Authority Response**

The planning authority considered the grounds of appeal do not raise any matter which would justify a change of attitude to the proposed development.

6.4 **Applicant's Response to Third Party Appeal**

The response to the third party appeal may be synthesised as follows:

- The appellant appears to have little regard to Condition 3(b) of the planning authority's decision. The applicant intends to comply with the condition and the appellant's concerns in relation to the parapet wall and cladding/flashing can be addressed.
- The rear patio, shed, games room, link building, boiler house, boundary timber fence, and bicycle shed do not impact on No. 96.
- The development omits the nearest vehicular access to No. 96.
- Any temporary disturbance during construction is regretted. There has been no real impact on property values.
- There is no oversailing of No. 92.
- Drainage proposals were approved by the Council's Drainage Division and surface water drainage is working properly.
- The application was fully examined by the competent authority.
- It is at the discretion of the planning authority to determine whether the further information or revised plans warrant fresh public notices. The nature and extent of the works are adequately described on the public notices and the appellant is fully aware of the scope of the works. It is noted that it is open to the Board to require the applicant to provide new public notices.

- The planning authority's conditions are adequate to ensure the completion of the works in accordance with the proper planning and sustainable development of the area.
- With regard to Condition No. 3(b), there is no objection to the application of an amendment to the length of the parapet wall. The wording of the condition requires an alternate solution for this section of the roof and associated soffit and gutter details.

6.5 Third Party Response to First Party Appeal

The response to the first party appeal may be synthesised as follows:

- Drainage concerns are raised in relation to the 4m wide entrance.
- The fence has a negative visual impact on the appellant's residential amenity due to its height and overbearing unsightliness.

The response also reiterates many of the applicant's concerns raised in his appeal.

6.6 Observation

The Observers, residing at No. 92 Stillorgan Grove, raise concerns relating to the staircase bay window looking south-east over No. 92, the widening of the vehicular entrance which is out of scale with the street frontage (in particular the piers), the finished roof profile, overhanging and encroachment on neighbouring properties, and the retention of the shed to the rear which has impacted on drainage.

6.7 Further Submissions

In response to the observation, the planning authority considered there were no grounds that merited a change of attitude to the development.

In response to the observation, the applicants noted details have been submitted to the planning authority in relation to the existing staircase bay window, they refuted the observers' submission relating to the vehicular entrance, and submitted they would have provided details on the parapet wall to the planning authority had they been requested. They refuted the claim that works oversail the observers' property

and photographs are attached in support of this submission. The applicants do not accept that works have damaged drains serving No. 92.

7.0 **Assessment**

7.1 Introduction

7.1.1 I consider the principal planning issues relate to:

- the nature and extent of the development,
- the impact of the parapet wall and cladding/flashing,
- the conditions of the Planning Authority's Decision,
- the impact of the vehicular entrance,
- the effect of fencing on amenity,
- drainage implications,
- the impacts of the staircase bay window on residential amenity, and
- encroachment on No. 92.

7.2 The Nature and Extent of the Proposed Development

7.2.1 The original proposed development presented in the application to the planning authority comprised the retention of alterations to the pitched roof to the side of the house, the retention of the widened vehicular entrance to include the provision of a pedestrian gateway to the side and associated piers, and the retention of side fences in the front garden area. When further information was received this application expanded to include the retention of a store/shed to the rear and a bicycle shed to the front. The store/shed is an extension to the house. It has internal linkage to the

house and it is physically attached to the house. Structurally, it is wholly tied in with the house. At the time of my site inspection it was in use as a music room. Whether it is determined to form a habitable or non-habitable room is of no relevant in its determination as an extension to the house. It remains a new extension to the house. The bicycle shed is a complete new structure sited to the front of the house, within the forecourt and bounded by the front boundary wall and adjoining the flank boundary fence.

7.2.2 These additional developments are significant and material changes to the nature and extent of the planning application. In accordance with Articles 17-19 of the Planning and Development Regulations 2001, the applicant is required to give notice of the application in a manner that describes the nature and extent of the proposed development. An extension to the house and the provision of a shed forward of the front wall of the house are significant additional developments that are unrelated to the retention of alterations to a pitched roof, the retention of a widened vehicular entrance, and the retention of side fences in a front garden. Public notices require to be submitted before the Board can make a decision on this appeal.

7.2.3 Further to the above, while I note that the further information provides plans and details of these development, there is not a complete required set of drawings, including sections and elevations. As well as new public notices, a full set of drawings for these developments, to include sections, plans and elevations, should be submitted before a decision is taken on the appeal.

7.2.4 Finally on this issue, I do not consider that the extension to the rear of the house in the form of a shed/store, lobby and boiler house and the provision of a bicycle shed to the front cause any significant concerns in relation to impact on visual or residential amenity, either for the occupants of the house or for neighbours. However, there is a necessity to provide adequate public notices and plans in accordance with statutory requirements to allow full consideration by all parties of the nature and extent of development and prior to the Board making a fully informed decision on the planning application.

7.3 The Parapet Wall and Cladding/Flashing

7.3.1 The parapet wall and cladding/flashing is an untidy and unsightly finish to the development on this site that has clearly caused concerns in relation to overhanging of the appellant's property. It appears the planning authority sought further information to gauge a better understanding of the visual impact of the 'as constructed' parapet wall, gutter and flashing. The planning authority did not seek changes to this component of the development at that stage but rather then sought to introduce changes in the form of the attachment of Condition 3(b) of its decision.

7.3.2 This component of the development is one of particular contention and clearly has not been satisfactorily addressed. The attachment of Condition 3(b) in the decision of the planning authority would exclude third parties from engagement in considering any resolution the applicant would put before the planning authority. This appears wholly unfair and inappropriate, given that there is clear concern that a section of the development has encroached on the appellant's property. Further to this, it is apparent from the applicants' submission to the Board during the course of this appeal that the applicants are satisfied to comply with the requirements of Condition 3(b), indicating that there is an acceptance of a need to re-address this component of the development.

7.3.3 Having regard to the above, it is my submission to the Board that, in the event of the consideration of a grant of permission for the proposed retention of development on this site, it would not be appropriate to attach a condition that seeks the applicant to make submissions to the planning authority providing alternative proposals to address the issue of the parapet and cladding/flashing. A reasonable approach would be for the Board to seek further information first, requesting the applicants to submit proposals that include the removal of the parapet wall along the northern side boundary and associated cladding/flashing and that also include alternative solutions to be put in their place. Further to this, the Board could circulate the response to the third party and planning authority for their consideration. In this way, the Board would be in a position to directly address the issue at hand without excluding the affected third party.

7.4 Conditions of the Planning Authority's Decision

7.4.1 I note the appellant has raised concerns about the appropriateness and enforceability of the conditions attached with the decision by the planning authority. The Board will be considering this application *de novo* and, thus, the attachment of conditions, in the event of any grant of planning permission, will be a matter for the Board.

7.5 The Vehicular Entrance

7.5.1 I note that the applicant has appealed Condition 3(a) of the planning authority's decision, which requires the vehicular entrance width to be reduced to a maximum of 3.5m by the insertion of a new section of wall to a height of 1.99m and with finishes to match the existing wall. It is apparent that this condition does not affect the height of the established wall or the piers as constructed. It is acknowledged that the observers raise concerns about the scale of the opening and height of the piers. They seek the removal of the piers and the wall to be completed to a contiguous height of two metres.

7.5.2 I note the wall to the frontage of the site is separated from the existing front boundary wall of the observers' property by the vehicular/pedestrian entrance to the appeal site. It is my submission that the wall itself is not incongruous and could not reasonably be construed as being visually intrusive. A distinction between the height of the two walls is not readily discernible when viewed from the public realm. I note that the entrance to the appeal site is a combined pedestrian and vehicular entrance, while there are separate vehicular and pedestrian entrances to the observers' property. I acknowledge that the original house on the appeal site had two separate vehicular entrances along its frontage. It is my submission that the extent of the opening along the frontage is not out of character with either the established form of openings in the vicinity or, indeed, historically for this site. I do not accept that the scale of the opening causes any significant adverse visual impact for the location in which it is placed. Further to this, I accept the piers exceed the height of the walls which they bound but consider that the marginal reduction in height and replacement of their capping to tie in with the height of the wall would not produce any particular or notable planning gain in seeking to protect the amenities of this area. I see no merit in tinkering with the piers to produce more squat structures in a location that exhibits no particular visual or architectural sensitivity.

7.5.3 With regard to the requirement to reduce the width of the opening to a maximum of 3.5m, the restriction to this width must reasonably be founded on sound planning grounds. The reason given in the planning authority's decision for the attachment of Condition 3, which required the entrance to be reduced in width, was: "To protect the residential amenities of the area and in the interest of visual amenity and harmony." It is my submission to the Board that the reduction in width of the existing entrance

by 0.5m will have no impact on residential amenity beyond the site and, as is submitted by the first party appellants, the 3.1m vehicular entrance may improve their amenity by accommodating improved vehicular turning movements. As regards visual amenity and harmony and further to my considerations above, I am of the opinion that the reduction of this entrance by 0.5m will have no impact on improving visual amenity and harmony at this location.

7.5.4 Finally, I note that the requirement to make changes to the existing entrance is not based upon any known traffic safety concern that has in any way been articulated by the planning authority. In light of this, I see no merit in proposing the insertion of a new section of wall along the site's frontage to reduce the entrance width.

7.6 Fencing

7.6.1 I note the third party appellant's concerns relating to the existing fencing flanking the boundary with his property, whereby it is considered the fencing has a negative visual impact on his residential amenity due to its height and its unsightliness. The first party appellants seek the omission of the condition requiring its reduction in height by 0.52m because, it is submitted, there is no rationale for its reduction, because it would be visually incongruent between the shed and the house, and because it provides visual screening between the properties.

7.6.2 Once again I note that the reason given by the planning authority for the condition requiring the reduction in height (i.e. Condition 3(c)) was: "To protect the residential amenities of the area and in the interest of visual amenity and harmony." In addressing this reason, I first note Drawing No. FI-06 attached with the further information submitted to the planning authority on 2nd February 2017. It is apparent that the timber fencing for both flank boundaries to the front of the house are similar in form, scale and character. It is my submission that such an approach could reasonably be viewed as harmonious and in the interest of the visual amenity of the area. I do not see how the provision of one such fence on one side of the property is less acceptable than the provision of a similar fence on the opposite side of the front garden when it is not demonstrated how or why such fencing requiring alteration adversely impacts on residential amenity or causes some form of visual disharmony.

7.6.3 I note that both fences abut planting within the appellant's and observers' properties that is higher than the fencing. I further note that the fencing considered necessary to be reduced in height is not readily discernible from the public realm and, thus, causes no particular visual incongruity either between properties or when viewed from outside of the properties.

7.6.4 In conclusion, I see no merit in Condition 3(c) of the planning authority's decision and consider the existing fencing to be acceptable along its northern flank in the same manner as the fencing along the southern flank has been deemed to be acceptable.

7.7 Drainage

7.7.1 I note the drainage concerns of the appellant and the nature and extent of hard surfacing in place on the appeal site. I, however, further note the applicants' submissions on the extent of drainage provisions made. It is also noted that there is no evidence of drainage difficulties to date arising from the completed development. I must finally acknowledge the considerations of the planning authority's Drainage Engineer, who twice reported on the drainage arrangements relating to the proposed development. I conclude by submitting that there is no merit in refusing the proposed development on drainage grounds based upon the information before the Board and my inspection of this property.

7.8 The Staircase Bay Window

7.8.1 I note the observers' submission on the staircase bay window that overlooks their property. I acknowledge that the applicants have failed to date to comply with the requirements of Condition 2(a) of the Board's decision under Appeal Ref. PL 06D.244714. I further note that provisions are being made to address this failure, as indicated in the further information submission to the planning authority and in the submission to the Board. Enforcement of these provisions are a matter for the planning authority.

7.9 Encroachment on No. 92

7.9.1 I am satisfied from the details provided in the application to date and from my inspection that there is no notable oversailing of the observers' property arising from the development the subject of the application before the Board.

8.0 Recommendation

8.1. Having regard to the above assessment, I consider the Board is not in a position at this time to make a decision on the application. There is a necessity to acquire new public notices and new drawings to meet with statutory requirements. I further consider that it would be prudent to seek further information relating to alternative solutions to the present arrangement applicable to the parapet wall and cladding along the northern side of the dwelling adjoining the appellant's property. I, thus, recommend that further information is sought as follows:

1. The Board notes that the development the subject of the planning application includes the retention of a shed/store, boiler house and associated lobby that form an extension to the existing house. It is further noted that the application includes the retention of a detached bicycle shed to the front of the house. These are considered additional developments to that originally proposed which are materially different to that original proposal.

You are requested to:

- (a) Publish notice in a newspaper and erect a site notice clearly articulating the nature and extent of the full development for which retention permission is being sought in accordance with the requirements of the Planning and Development Regulations 2001, as amended, and to submit copies of same to the Board.
- (b) Submit a complete set of plans, sections and elevations of the shed/store/boiler house/ lobby and the bicycle shed in accordance with the requirements of article 23 of the Planning and Development Regulations 2001, as amended.

2. The Board considers that the present development associated with the retention application, which provides the parapet wall and associated flashing/cladding on the northern side of the house, constitutes an unsightly component of the development that is intrusive on the adjoining property to the north of the site. The Board notes that the planning authority considered the present provisions unacceptable, requiring alternative solutions, and, from correspondence received, that the applicant is amenable to addressing these concerns.

You are requested to submit alternative arrangements, in the form of plans to a minimum scale of 1:200, that propose to remove the parapet wall and associated flashing/cladding along the northern side where it rises above the level of the adjoining gutter and soffit and that propose to make replacement provisions to address the visual incongruity of this component of the development, as well as addressing any potential overhanging of the adjoining property to the north.

Kevin Moore
Senior Planning Inspector

29th June 2017