



An
Bord
Pleanála

Inspector's Report PL 29S 248243.

Development	Ground floor and first floor extensions, internal modifications and associated site development works.
Location	35 Upper Mount Pleasant Avenue, Upper, Ranelagh, Dublin 6.
Planning Authority	Dublin City Council.
P. A. Reg. Ref.	4473/16
Applicant	Anne Marie and David Murtagh.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	First Party Appeal (Section 139 Appeal) x Conditions Nos. 3 (a) and 3 (b) and Condition No 8.
Appellant	Anne Marie and David Murtagh.
Observers	1. Belgrave Residents Association. 2. Arnaud Cras.
Date of Inspection	17 th May 2017.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site which has a stated area of 318 square metres is that of a terraced early nineteenth century two storey house with a return and rear garden on the west side of Mountpleasant Avenue Upper, Ranelagh. The house has a total stated floor area of 162 square metres and there is an existing single storey extension at the rear comprising open plan kitchen and dining/living room accommodation opening onto the rear garden.
- 1.2. No 34, the adjoining property to the north side is a similar original house and has a shared return except that it has not been subject to additional development. No 36 the adjoining property to the south side which is a detached house has been extended to the rear further to a grant of permission P. A. Reg. Ref. 6118/06. Works at this property involving reconstruction were subsequently subject to a grant of permission for retention under P. A. Reg. Ref. 5621/07. Mountpleasant Avenue Upper is to the north from the junction of Charleston Road and Belgrave Square north and is primarily a residential road with historic houses and more recent apartment block development.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority on 23rd December, 2016 indicates proposals for removal of the existing ground floor extension and for construction of ground and first floor extensions to the rear of the existing dwelling. The development proposal includes proposals for alterations to the existing dwelling to include works to the rear return and removal of the chimney stack to facilitate the proposed development. Included with the application are shadow analysis diagrams.

3.0 Planning Authority Decision

- 3.1. **Decision.**
 - 3.1.1. By order dated, 24th February 2017 the planning authority decided to grant permission subject to conditions.
 - 3.1.2. Condition Nos. 3 (a) and (b) are reproduced below:

(A) *“The first floor extension shall be modified such that the existing chimney and rear elevation is retained and any extensions does not extend beyond the existing first floor return rear wall and does not extend over the shoulder of the existing gable.”*

(B) *“The ground floor extension shall be pulled back from the ‘sawtooth’ boundary with Number 34 Mount Pleasant Avenue Upper by 0.4 m and shall exhibit a flat roof of a height of no more than 2.9 m in line with the roof closer to the main body of the house.”*

A compliance submission is required. The reason cited is for the interest of residential amenity and architectural character having regard to section 16.2.2.3 and 16.20.4 and Appendix 17 of the Dublin City Development Plan, 2016-2022. contain requirements for adjustments to the first floor extension and requirements for modifications to the ground floor extension for reasons relating to residential amenity and preservation of architectural character.

3.1.3. Exempt development entitlements to extensions, garages, stores offices of similar structures provide for under Schedule 2, Part 1 of the Planning and Development Regulations, 2001 as amended are removed under Condition No 8. The reason given is for protection of residential and visual amenity and to ensure sufficient private open space.

3.1.4. Condition No 2 provides for restriction of hours of construction for reasons of residential amenity at adjoining properties.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The planning officer in his report referred to various relevant extracts from the current development plan and raised specific concerns about:

- The proposed interventions to the chimney stack and the existing return as key elements to the uniformity in the characteristics of the pair of dwelling comprising No 35 and the adjoining dwelling at No. 34.

- Adverse impact on the adjoining property due to obstruction of sunlight and daylight access and the seven metre depth and 3.7 metre height of the ground floor extension particularly in view of the “saw-tooth” element of the boundary to the rear garden.

3.3. Third Party Observations

- 3.3.1. Third party submissions were received from two parties in which issues of concern raised relate to the impact on historic fabric and architectural character and integrity and on residential amenity at the adjoining property. These two parties have also lodged observer submissions on the appeal.

4.0 Planning History

- 4.1.1. There is no record of any planning history for the appeal site.
- 4.1.2. Several residential properties in the area have been subject to applications for permission and permission for retention for extensions and alterations including the adjoining property to the south side at No 36 Mount pleasant Avenue Upper. (P. A. Reg. Refs. 6118/06 and P. A. Reg. Ref. 5621/07 refer.)

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site is subject to the zoning objective Z2: to protect and/or improve the amenities of residential conservation areas.
- 5.1.2. Policies and objectives and standards for Alterations and extensions are in section 16.2.2.3, section 16.10.12 and appendix 17.

6.0 The Appeal

6.1. The First Appeal

6.1.1. A First Party appeal against conditions Nos 3 (a) and (3) (b) and Condition No 8 was received from Delahunty and Harley on behalf of the applicants on 23rd May, 2017. It is stated that the applicants who purchased the property, (in 2014) wish to alter and extend the house in order to meet their accommodation requirements. They wish to provide for an additional bedroom and enlargement of the bathroom and bedroom accommodation in the return and to expand and the dining and kitchen space at the ground floor providing for additional break out space. (A detailed description of the applicants' background and accommodation requirements is provided in the appeal.) According to the appeal which is comprehensive in length and detail the conditions are unreasonable because:

- The proposed extensions are carefully considered high quality and are not obtrusive to adjoining properties. There is good integration with the scale and profile of the existing house, the existing windows and materials and finishes. There is separation distance of fifty metres from the apartment block at the rear and the garden size will be 166 square metres in area.
- Condition No 3 (a): The requirements are unreasonable as the extent of the extension at three metres is not excessive. The roof profile and ridge line is considerable lower than the existing and the required modifications are impracticable as regards provision of an additional bedroom to meet the applicants' needs. The roof over the bedroom is pitched and lower than the current return to prevent overshadowing of the adjoining property. The bedroom in the return at No 34 has sufficient windows and there is minimal impact on light and privacy.
- Condition No 3 (b): The requirements are unreasonable as the building in the adjoining site is a windowless shed.
- Condition No 8: The condition is an unnecessary imposition as the floor area exemptions would be exhausted. the remaining garden is more than sufficient for reasonable outhouse development and there is no rear access.

- The sun path diagrams show minimal impact on adjoining properties. The existing effect of the planting at No 34 was not taken into consideration.
- In addition to developments on Mountpleasant Avenue Upper that establish precedent there are several more relevant permitted developments in the adjoining areas. Permitted developments are identified, outlined and discussed in the appeal. The developments identified on Mount pleasant Avenue Upper are at No 20, (2054/13) No 22 (2807/10), No 25 (2697/11) and No 36 (6118/06). The developments identified on Belgrave Square are: No 18 (3448/08). Permitted developments on Palmerston Road are: No 81 (4069/10) and No 69, 2570/08

6.1.2. With regard to the observation submitted by Mr Cras of No 34 it is submitted that:

- It is now proposed that the chimney will be retained. The first floor return windows will not be affected (Drawing No 310A and 311A included with the appeal refer.)
- No 34 is characterised by heavy planting; any additional overshadowing would be minimal, there being no loss of light at ground level except to the shed and first floor windows will be well lit.

6.1.3. With regard to the observation submitted by Belgrave Resident's'; Association, it is stated that the submission is based on policies, objectives and guidance relating to protected structures but the subject property is not a protected structure.

6.1.4. It is stated the occupants of No 36 were consulted and there is no objection subject to conditions covering working hours and standards for structural works undertaken.

6.2. **Planning Authority Response**

6.2.1. In a letter received from the planning authority on 6th April, 2017 it is stated that there are not additional comments or changes to those within the planning officer report on the application.

6.3. **Observer 1: Belgrave Residents Association:**

6.3.1. A submission was received on 19th April, 2017 from Cliona Buckley on behalf of the Belgrave Residents Association. It is stated that the planning authority did not take the conservation context, and residential amenity at the adjoining property at No 34

and the Z2: zoning residential conservation area objective into account in deciding to grant permission for a large extension to No 35. According to the submission:

- The proposed extension has adverse impact on the existing return, the chimney stack being a key uniform element of the pair of houses at No 34 and 35 and it should be retained as this is in line with policy section 16.2.2.3 of the development plan for protection of existing architectural character and features. Residential conservation areas are protected from unsuitable new developments or works that have negative impact on amenity or architectural quality of the area. In addition, with regard to residential amenity and his concerns about the depth of the extensions the planning officer's comments are firmly rooted in the provisions of the development plan. The appeal does not to address the planning officer's evaluation, rationale for the conditions or relevant provisions of the development plan.
- The proposed adjustment to the chimney would obliterate the symmetry of the paired gable returns of the two houses and integrity through demolition of the chimney structure constitute vertical bulk of the gable from ground and first floor.
- The total extended area would amount to over fifty percent increase in the floor area of the house and there is only a modest reduction required by condition.
- The development plan requires sensitive design without adverse impact on scale and character of the existing building or the amenities of adjacent buildings in terms of privacy access to daylight and to sunlight. The planning officer view as to the three metre extension being the return negative impact on daylight and sunlight at No 34 having regard to orientation is supported and the comments in the appeal to the contrary regarding light at the rear windows at No 34 are rejected.
- With regard to precedent, the examination by the applicant's agent gives rise to further concern about the current proposal. The development at No. 36 was subject to a retention application relating to demolition and reconstruction following commencement of works under the original grant of permission.

- Pertinent details are omitted in the outline and comments on the development permitted at 67 and 68 Palmerston Road and the proposed development is not comparable to the current proposal.
- Structural integrity and stability of both properties, particularly the risks to the paired return are a major concern notwithstanding the scope of other regulatory works. There is no information on original masonry and their loading. The drawing in the appeal shows a column but no indication of how the load of the roof and chimney stack will be supported through to the ground or how the remaining structures in the return are to be supported. The required omissions safeguard the architectural integrity and character of the houses.
- The pair of houses does deserve special consideration for historic and heritage value and an appreciation of best practice as provided for in the statutory guidelines and development plan in which a range of measures are identified which include the Z2 zoning objective and policy CHC4 for the protection of 'Conservation Areas'.
- The development as modified by condition provides a satisfactory accommodation of the applicant's proposal while fulfilling the application of the development plan provisions in the interest of the proper planning and sustainable development of area and the protection of the adjoining properties.

6.4. Observer 2: Arnaud Cras, 34 Mountpleasant Avenue Upper:

- 6.4.1. A submission was received from Peter Roberts Architect on behalf of Mr. Cruz on 18th April, 2017. It is stated that condition Nos 3 (a) and (b) are considered to be appropriate responses and that Condition No 8 confirms concerns as to type of development proposed for the property. It is requested the attachment of Condition Nos 3 (a) and (b) and Condition 8 be retained.
- 6.4.2. According to the submission:
- The application does not comply with the spirit of the development plan and it is not agreed that the development is carefully considered and is not dominant

or obtrusive to adjoining sites as submitted on behalf of the applicant. Little consideration was given to the design of the extension and on the impact on adjoining property.

- It is acknowledged that the property is not on the record of protected structures or in an architectural conservation area but as stated in section 16-101.12 of the development plan and Appendix 17 there are clear policies that an extension should not result in loss or of obscure or detract from architectural features contributing to quality of an existing building including chimney sticks of historical interest and distinctiveness. (The planning officer's comments are reproduced in the submission.)
- The need for additional space does not trigger absolute rights to develop an extension.
- The wall to the rear would project three metre beyond the window in the gable wall of the return of No 34 and be within 300 mm of the window which would obscure the vista to the garden and light.
- The modifications made in the appeal do little to improve the profile of height of the proposed development. the only change being the retention of the chimney stack at roof level. Drawings 310A and 311A refer)
- The garden at No 34 is not heavily planted and is maintained so that the property benefits from daylight that would be taken away by the proposed development.
- No 36 is not attached in the way that No 34 is attached to No 35 that gives rise to potential for potential detrimental effect on fabric by structural works. Remarks about No 36 are of no relevance.
- All applications on their assessed on their own merits rather than by reference to five and three metre lengths.
- Reference to a shed at No 34 are inaccurate as the area referred to is the scullery which is in use and part of the original fabric of the return at No 34.
- The development extends to almost eight metre beyond the gable wall of the original return.

- Condition No 8 should be included as it protects the original fabric and structure against excessive development.
- The applicant could have gained a greater appreciation of the negative sunlight and daylight impact agent on No 34 if he had visited the property. The sun path diagrams show significant impact to the rear of the property.
- Precedents can establish certain principles. The precedents referred to regardless of whether or not they are protected structures do not relate to rigorous assessment of the current proposal concluded that there would be detrimental impact on No 34.
- The applicants purchased the property in 2014 but size, format and plot size does not give an applicant entitlement to development. Changing accommodation needs are not an excuse for overdevelopment, loss of original character and fabric and adverse impact on adjoining property.

6.5. Applicant's Response to the Observer Submissions

6.5.1. A submission was received from the applicant's agent on 16th May, 2017 the contents of which are outlined in brief below:

- There was no access to No 34 but the survey was completed in good faith.
- The proposed work is in line with similar permitted work in the area and the perceived unacceptability of the proposal is rooted in policies objectives and guidance relating to protected structures.
- There are parallels to an application for No 31 Pearce Square (protected structures) where the conservation officer remarks on domestic buildings undergoing more significant change than other building typologies which is understandable and reasonable to allow buildings continue for uses for which they were designed. Some extracts from the conservation officer's report are provided in the submission.
- At just over 200 square metres the dwelling including the extensions would constitute a four bedroom at the lower end of the range of house size in the area and is reasonable.

- It is reiterated that there is no ground floor window in the return at No 34; the first floor windows would be no more unaffected than the impact on No 35 by the extensions at no 36 that overshadowing is minimal due to existing heavy planting at No 34 and that the three metre projection (at upper floor level) is reasonable for an urban environment
- Obliteration of views to the rear is irrelevant as the occupant of No 34 has no right to a view over the applicant's garden as contended in the observer submission
- With regard to the planning history at No 35 the applicant's agent was not the contractor for that development. Professional project management will be arranged for the proposed development.
- The reference to the application under 2470/08 in the appeal was related to permitted overshadowing at No 70, (Not No 68)
- With regard to the concerns about structural integrity the proposed works are common place and carried out to highest standards with regard to safety of occupants and neighbouring structures. Health and safety and construction issues are the concern of the HSA and Building Control authorities.
- With regard to Heritage and the contention that it is the applicant's view the Nos. 34 and No 35 do not deserve special consideration for their historic or heritage value it is stated that the applicant's agent seeks to respect as much possible the special nature of the building and have proposed no alterations that would be visible from the public realm. It is necessary to alter historic buildings, especially houses so that they meet needs of contemporary life and benefit the survival of the building.

7.0 Assessment

The applicant has lodged an appeal against Condition Nos 3 (a) and 3 (b) and Condition No 8. Within the appeal the applicant proposals modifications to the chimney stack providing for retention within the development which differ from the proposals considered by the planning authority. Drawings Nos. 310A and 311A included with the appeal refer.

7.1. Having inspected the site and having reviewed the documentation available in connection with the application and the appeal including the observer submissions, it has been concluded that *de novo* evaluation, is unwarranted and that determination of the decision in accordance with the provisions of section 139 of the Planning and Development Act, 2000 as amended, (the Act) would be appropriate.

- The planning issues that have arisen which can be considered under the two broad sub-headings identified below followed by some clarification regarding some other matters that have been raised in the Appeal and Observer submissions and finally appropriate assessment is considered. The two sub-headings are:
 - impact on residential amenities of adjoining properties and,
 - impact on historic fabric and the architectural character of the area.

7.2. Impact on residential amenities of adjoining properties.

7.2.1. It is considered that the modifications under condition 3 (a) for first floor extension as proposed in the application are required and justified in order to eliminate adverse impact on the residential amenities of the adjoining property at No 34.

7.2.2. The property at the appeal site is to the south side of No 34 with which it is paired and shares a rear return. With regard to the proposed first floor extension, the view of the planning officer as to obstruction of sunlight and daylight access to the internal accommodation at the rear of the adjoining property both within the return, at ground floor level and within the rear garden private open space is supported. The tree and shrub planting within the rear garden of No 34 which would appear to comprise some indigenous species may have some impact on access to light within the rear garden and ground floor accommodation. However, such a consideration is regarded as

immaterial to consideration of the impact of proposed structures in an adjoining property. To this end the concerns of the planning officer and the occupant of No 34 as indicated in the Observer submission are reasonable and it is noted that the submitted shadow analysis diagrams are also indicative of overshadowing impact.

- 7.2.3. The three metre depth beyond the line of the existing paired return along the depth of the boundary in conjunction with the height is considerable. Irrespective of the depth of the proposed ground floor extension and the saw-toothed configuration of the footprint and rear garden the proposed first floor extension would give rise to an over dominant sense of enclosure at No 34 by reason of the proximity, bulk and height and depth of the extension in conjunction with the adverse impact due to obstruction of daylight and sunlight access.
- 7.2.4. With regard to the ground floor extension the concerns of the planning officer with regard to the seven metre depth, the height at the boundary especially in that the footprint of the extension which follows the saw toothed configuration of the site are justified. As opposed to outright rejection of the proposal, it is considered that sufficient mitigation of the adverse impact can be achieved by provision for a setback from the footprint from the side boundary beyond the saw-toothed element. The sufficiency of the somewhat redundant 400 mm wide separation distance from the boundary is borderline with regard to impact on the residential amenities of the adjoining property. If this view is concurred with it may be advisable for the saw-toothed projection to be omitted with the applicant being provided with the opportunity to modify the south side of the footprint so that it is parallel to the northern side to facilitate the utility of the configuration of the internal accommodation. This could be addressed through revisions to Condition No 3 (b)
- 7.2.5. It is acknowledged that the requirements of Condition No 8 would be nullified having regard to Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, (the Regulations) relating to extensions to a house which do not exceed forty square metres in floor area. However, it would be appropriate in the case of consent for smaller size extensions, notwithstanding any potential for future proposals to be in material conflict with conditions attached to prior grants of permission. It is considered reasonable that the condition should be attached to allow for further planning review with regard to possible future development that comes within other classes of development Class 1 and 3 of Part

1, Schedule 2 to allow for further planning review, bearing permitted development in mind.

7.2.6. Impact on historic fabric and the architectural character of the area.

7.2.7. There is no dispute between the parties that the property is not included on the record of protected structures and is not located within a statutory architectural conservation area and that it is within an area subject to the Z2 zoning objective: *to protect and/or improve the amenities of residential conservation areas*. To this end both the house which dates from the early nineteenth century, the adjoining house along most of the houses along the street network within the location in Ranelagh and Rathmines are of historic architectural heritage merit worthy of the protection afforded by the zoning objective in addition to the other relevant policies and objectives within the development plan, and the statutory guidance within Architectural Heritage Protection: Guidelines for Planning Authorities issued by DOEHLG in 2005. Lack of statutory protection either by inclusion on the record of protected structures or designation as a statutory architectural conservation does not preclude historic fabric and architectural heritage merit as significant planning considerations.

7.2.8. The rear returns and chimneystacks in along residential road with historic terraced houses such as the subject dwelling returns are unquestionably features of significant value both to the architectural character and integrity of the historic fabric buildings and to the streetscape context. As such a reasonable balance is desirable in providing for contemporary use of historic buildings and retention and preservation of fabric can usually be achieved without removal or modification of these features. To this end the removal in entirety or significant alteration to the return and chimney stack is not supported. To this end, it is noted that a method statement of specification is not available with the application and appeal in which there are proposals for modifications to the original proposal that provide for the retention of the original chimney stack within the proposed development. Furthermore, in this regard the concerns as to the implications for structural stability of the subject and adjoining historic buildings given the nature of the interventions proposed are

reasonable and it is noted that a detailed method statement for the works are not available in the application and appeal submission.

7.2.9. It is therefore considered that the requirements of the Condition No 3 whereby works to provide for a limited extension at first floor level preclude intervention to the existing chimney stack and minimise interventions to the return allow for a reasonable balance to be achieved in that there is or some additional habitable living accommodation at first floor level, (although not at the extent sought in the application) while correspondingly providing for the preservation and maintenance of the integrity of the fabric of the existing building and its architectural character in conjunction with the adjoining and surrounding buildings in the residential conservation area.

7.3. In view of the foregoing, it is recommended that the requirements of condition Nos 3 (a), 3 (b) and 8 are justified and that the planning authority should be directed to attach these conditions with some minor revisions to the modifications required for the footprint being included if required.

7.4. **Other Matters.**

7.4.1. The details provided in the appeal about the applicants' relatively recent purchase of the property and about their accommodation requirements are noted. While these requirements are appreciated it is not inappropriate to allow for these requirements to be accepted as a material consideration in determining a decision on a planning application.

7.4.2. With regard to precedent, the detailed account and commentary on several prior applications for development at houses Mount Pleasant Avenue and the surrounding area are noted and have been considered and it has been concluded that precedent cannot be taken from any of these examples. In the case of the adjoining property at No 36 in particular, it should be borne in mind the existing house is a standalone detached house whereas No 35 is paired with No 34 with identical twin features, notably the paired rear returns and chimney stacks and is within a distinctly defined terrace with regard to the proposed development. The proposed development has been considered on the basis of its own merits.

7.5. **Appropriate Assessment.**

- 7.5.1. Having regard to the location of the proposed development within an established residential area development on zoned lands in an area which is serviced. it is considered that no appropriate assessment issues arise. The proposed development would not 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. In view of the foregoing, it is recommended that the planning authority be directed to attach Condition Nos 3 (a) and 3 (b) and Condition No 8 on the basis of the reasons and consideration set out below. Should it be considered appropriate, revised terminology could be substituted.

9.0 Reasons and Considerations

- 9.1. The proposed development in the absence of the required modifications of Condition Nos 3 (a) and (b) and Condition No 8. by reason of footprint, depth, scale, mass and height and by reason of the extent and nature of the proposed interventions to the existing historic fabric would be seriously injurious to the residential amenities of the adjoining property by reason of overshadowing, visual dominance, overbearing impact and enclosure along the southern boundary and adverse impact on the integrity and character of the existing building and adjoining buildings on Mountpleasant Avenue Upper within the residential conservation area and would be contrary to the proper planning and sustainable development of the area.

10.0 Draft Conditions.

Condition No 3 (a) and (b)

The development shall be modified as follows:

- (a) The proposed first floor extension shall be confined to the building line of the existing rear return and the existing chimney stack and rear wall shall be retained within the confines of the existing gable.
- (b) the footprint of the ground floor extension shall be setback by a minimum separation distance of 0.4 metres from the north side 'saw-toothed' boundary with the adjoining property and a flat roof not in excess of 9.9 metres height shall be provided.

Prior to the commencement of the development, the applicant shall submit and agree revised, plan, section and elevation drawings in writing with the planning authority.

Reason: In the interest of the protection of the residential amenities of the adjoining property and the protection and integrity of existing historical fabric and architectural character of the residential conservation area.

Condition No 8.

Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 as amended, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: To allow for further planning review in the interest of residential amenities of the area.

Jane Dennehy
Senior Planning Inspector
18th May, 2017