



An  
Bord  
Pleanála

## Inspector's Report PL06F.248280.

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<b>Development</b>	Retention of an existing single story cabin in rear garden and permission for the use of the cabin as a painting studio and ancillary office and storage.
<b>Location</b>	73 Dublin Road Sutton.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	F16A/0450.
<b>Applicant(s)</b>	Begona Alvarez.
<b>Type of Application</b>	Permission for Retention.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Gerald Giblin.
<b>Observer(s)</b>	David Thomas.
<b>Date of Site Inspection</b>	29/05/2017.
<b>Inspector</b>	Karen Kenny.

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## 1.0 Site Location and Description

- 1.1. The appeal site is one of a series of long narrow residential sites that front directly onto the Dublin Road west of the Baldoyle Road junction.
- 1.2. The site has a stated area of 0.1482 hectares with a stated width of 13.8 metres and a stated depth of 109.5 metres. The long narrow site contains a detached dwelling that is set back within the site, a low profile flat roof garage to the front of the dwelling and a timber cabin and chicken coop in the rear garden.
- 1.3. There are adjoining residential properties to north, east and west. The rear garden boundaries comprise of wooden fencing to side of between 1.8 metres and 2.0 metres in height and a solid wall to rear of 2.2 metres.

## 2.0 Proposed Development

- 2.1. Permission is sought for retention of an existing timber cabin in the rear garden for use as a painting studio with ancillary office and storage rooms. The structure comprises a room to front with a kitchenette, two smaller rooms and a toilet / shower room. It has a pitched roof measuring 3.2 meters at its apex. The roof overhangs and external deck to front.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to Grant Permission for Retention subject to 8 no. conditions. The use of the cabin is restricted to use as a painting studio with ancillary office and storage.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Officers Report reflects the decision to grant permission.

#### 3.2.2. Other Technical Reports

Water Services: No objection (following Further Information).

### 3.2.3. Prescribed Bodies

Irish Water: No objection.

### 3.3. Third Party Observations

4 no. submissions were received from landowners in the vicinity of the site. Issues additional to those raised in the grounds of appeal below are as follows:

- Removal of vegetation and encroachment on privacy of adjoining property.
- Shed represents an overdevelopment of the site, is visually intrusive and overshadows adjacent garden.
- Increase in noise levels at anti-social hours from past from use of cabin.
- Concerns raised in relation to signage, access arrangements, drainage, fire risk and site notice.

1 no. submission supports the development.

- Design and use as painting shed is benign, in keeping with character of the area and similar to other buildings in area.
- Structure hidden from public view and does not overshadow any properties.
- Enhances residential amenity of occupants and does not affect neighbours.
- Use as a workplace ancillary to main residence is environmentally sustainable.

## 4.0 Planning History

F16A/0249: Permission refused for retention of an existing single storey timber cabin used as a fine art painting studio. Reason for refusal related to the failure to accurately describe the extent of existing and proposed development.

FS5/012/16: Section 5 Declaration sought for existing cabin in back garden of No. 73 Dublin Road, Sutton, for use as studio

for fine art painting and occasional sleeping accommodation. The existing cabin constitutes development and is not exempted development.

Enforcement 15/179b: Warning letter issued in relation to cabin in rear garden of No. 73 Dublin Road, Sutton.

## 5.0 Policy Context

### 5.1. Development Plan

The site is zoned RS “provide for residential development and protect and improve residential amenity” under the Fingal County Development Plan 2017-2023. The decision dated 8<sup>th</sup> March 2017 to grant permission was made under the Fingal County Development Plan 2011-2017. The zoning objective of the appeal site is unchanged.

### 5.2. Natural Heritage Designations

The site is located c. 22 metres north of the following Natura 2000 sites:

- European Site No. 004006 North Bull Island SPA.
- European Site No. 000206 North Dublin Bay SAC.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The principle grounds of appeal are summarised below:

Validity of the Application:

- Drawings submitted with the application are inadequate.

Planning Process:

- No significant change of use from previous application for retention (Reg. Ref. F16A/0249). Current application is an attempt to continue

commercial business. Request that the Board carefully consider this and revise the conditions attached to the grant of permission to restrict use of the development.

#### Condition No. 3

- Concern that the Condition No. 3 is too vague and ambiguous regarding the limitations for use of the studio.
- Condition does not limit the use of the cabin as a habitable dwelling or for residential accommodation.
- Appellant has no objection to use of the studio for recreational use.
- Request that the Board review the condition and consider amending it to give assurance that this cabin will not be permitted for any habitable use for any length of time, including short-term lets.

#### Legitimacy of the Proposed Use:

- There has been no substantive change from the previous application. The structure continues to be habitable. Its large size is not consistent with the proposed use and the appellant questions the need for a kitchenette / bathroom / water services / electricity.
- The cabin was built to be used as an additional habitable space and retains features / fixtures which will enable it to revert back to its former use as a habitable space.

#### Intended Users:

- There is a lack of evidence in relation to the intended users of the painting studio and in relation to how it is intended to operate. Concerns in relation to potential visitors / users and potential impacts, such as increased noise levels.
- Considered that the development would seriously injure the residential amenity of surrounding properties.

## 6.2. Applicant Response

### Validation of Application

- Drawings validated by Fingal County Council. This issue was not raised in previous submissions to Fingal County Council.
- The location, height and bulk of the cabin has been apparent since its construction. Cannot be argued that the dimensions to boundaries, levels and contours are critical to this appeal.

#### Content of Application

- Previous refusal for retention does not constitute a valid basis for an appeal.

#### Condition No. 3

- Condition No. 3 reflects pre-application communication and is explicit.

#### Use of Development

- The cabin is a modest single storey structure set in a generous garden.
- Cabin design allows it to serve many purposes, including use as an Art Studio.
- Speculation about future uses is flawed. The applicant intends to use the cabin in accordance with relevant conditions that may be imposed in the event that the Board decides to support the Council's decision.
- The proposed uses of painting studio, office and store are described on application drawings.
- The applicant is a fine artist and proposes to use the cabin as her painting studio.

### **6.3. Planning Authority Response**

- The application was assessed against the policies and objectives of the Fingal County Development Plan 2011-2017 and existing government policy and guidelines. The proposal was assessed having regard to the development plan zoning objective as well as the impact on adjoining neighbours and the character of the area.

- The new Fingal Development Plan 2017-2023 came into force on 16<sup>th</sup> March 2017. The Planning Authority is satisfied that no significant changes have occurred in the development objectives since the date of the notification of a decision, such that the development would be no longer consistent with the proper planning and sustainable development of the area.
- Planning Authority remains of the opinion that the proposed development will not detract from adjoining residential amenity, subject to compliance with conditions.
- In the event that the Planning Authorities decision is upheld it is requested that Condition 5 be amended and that a levy of €2,587.00 be applied.

#### 6.4. **Observations**

1 no. observation has been received. Principal points can be summarised as follows:

- The appeal has no new evidence.
- Structure similar to other structures in area and replaced a similar structure.
- Structure is under 40 sq. meters on a 1500 square meters' site and represents less than 2.5% of the site area.
- No precedent for large soakaway or drainage pit in surrounding properties.
- Limitations for use are very explicit and precise.
- The cabin has never been advertised for rent or commercial use by the applicant on any social media. Material used in advertising the main house has been used.

#### 6.5. **Further Responses**

None.



## 7.0 Assessment

7.1. I consider that the main planning issues in the assessment of the proposed development are as follows:

- Principle of Development;
- Pattern of Development and Impact on Amenity;
- Appropriate Assessment Screening
- Other Issues.

### 7.2. Principle of Development

The application site is zoned RS “*To provide for residential development and protect and improve residential amenity*”. I consider that the proposed use of the cabin as an Art Studio with ancillary office and storage space is incidental to the enjoyment of the dwelling and is acceptable in principle within the zoning objective.

### 7.3. Pattern of Development and Impact on Amenity

The cabin is located in the rear garden of a large residential property. It has a footprint of 36sq.metres (6m x 6m) with a stated internal floor area of 32.2 sq. metres. It is set off the northern and eastern site boundaries with setbacks of 0.82 metres and 1.24 metres identified on the site layout plan. I consider that the existing structure is well screened from the adjoining properties by the existing boundary walls, fencing and planting. The structure by reason of its height, scale and setback from boundaries is in keeping with the pattern of development in the area and does not impact unduly on the amenities of adjoining residential properties by way of overlooking or overshadowing. Given the location of the cabin in the rear garden of the property and the proximity of dwellings to east, west and north it is considered that uses other than those that are incidental to the enjoyment of the existing dwelling have the potential to impact negatively on the amenities of properties in the vicinity by reason of noise and disturbance and would need to be considered in their own right. I therefore consider it appropriate to restrict the use of the cabin to the uses outlined in submitted documentation and to specifically exclude human habitation, commercial uses and the use of the cabin independent of the main dwelling.

#### 7.4. **Appropriate Assessment Screening**

Having regard to the minor nature of the development and its location in a serviced urban area, 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.

#### 7.5. **Other**

The cabin does not reduce the area of private amenity space below the standards set out in the Fingal County Development Plan 2017-2023 and is considered to be in accordance with the policies and objectives of the County Development Plan.

It is proposed to disconnect rainwater gullies from a combined sewer and to install rainwater butts and a soakaway to treat rainwater overflows. The decision of the planning authority required these works to be completed within 3 months of the grant of permission.

#### 8.0 **Recommendation**

8.1. Grant permission with conditions.

#### 9.0 **Reasons and Considerations**

Having regard to the nature and scale of the proposed development and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions below, the development proposed for retention is in keeping with the character of the area and would not seriously injure the amenities of the area or of properties in the vicinity. 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 retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 14<sup>th</sup> day of February 2017, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to use as an Art Studio that is incidental to the enjoyment of the dwelling house, unless otherwise authorised by a prior grant of planning permission.

**Reason:** To protect the amenities of property in the vicinity.

3. The development shall not be used for human habitation or commercial purposes and shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

**Reason:** In the interest of residential amenity.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, 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.

**Reason:** In the interest of the amenities of the area.

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. Drainage works shall be completed within 3 months of the final grant of permission unless otherwise agreed with the planning authority.

**Reason:** In the interest of public health.

6. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable

indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Karen Kenny  
Senior Planning Inspector

29<sup>th</sup> May 2017