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Bord  
Pleanála

## Inspector's Report PL06S.248498

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<b>Development</b>	Extension to house.
<b>Location</b>	2 Taylors Lane, Ballyboden, Dublin 16.
<b>Planning Authority</b>	South Dublin County Council.
<b>Planning Authority Reg. Ref.</b>	SD17B/0009.
<b>Applicant</b>	Rodney Bishop.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To grant permission subject to conditions.
<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Frank, Martina and David Kelly.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	27 July 2017.
<b>Inspector</b>	B. Wyse.

## 1.0 Site Location and Description

- 1.1. Taylors Lane is a suburban area to the south of Dublin City. No. 2 is one of four similar style detached houses on the northern side of the road. The house is positioned so that there is a single side/vehicular passageway along its western side. The side of No.1, the appellants property, bounds this passageway.
- 1.2. See maps and photographs in the file pouch.

## 2.0 Proposed Development

- 2.1. The proposed development comprises a single storey, flat roofed extension to the side of the house, stated floor area 52sqm. The extension would project slightly to the front and incorporate 'garage doors' to this elevation. Finishes generally would match/harmonise with existing. The extension would abutt the adjacent house, No.1.
- 2.2. Further information submitted to the planning authority provided for the extension of the neighbouring property soil vent stacks to the underside of their eaves.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The decision to grant permission is subject to seven standard conditions. Notes attached to the decision include a reference to section 34(13) of the Act.

### 3.2. Planning Authority Reports

- 3.2.1. **Planning Reports** (dated 7 March and 20 April 2017)

Basis for planning authority decision.

Include:

Reference to; the absence of any letter of consent from the neighbours to the proposed extension of their soil vent stacks; lack of clarity as to the location of the boundary between the two properties; likely enforcement difficulties; and that issues relating to encroachment or oversailing should be dealt with between the property owners.

### 3.2.2. **Other Technical Reports**

**Water Services:** no objection subject to standard conditions.

### 3.3. **Prescribed Bodies**

**Irish Water:** no objection subject to standard conditions.

### 3.4. **Third Party Observations**

A submission was lodged by the appellants in the current appeal raising similar issues to those raised in the grounds of appeal – see Section 6.1 below.

## 4.0 **Planning History**

4.1. No relevant history identified.

## 5.0 **Policy Context**

### 5.1. **South Dublin Development Plan 2016**

5.1.1. Zoning – RES ‘To protect and/or improve residential amenity’.

5.1.2. Policy H18 – to support the extension of existing dwellings subject to the protection of residential and visual amenities.

5.1.3. H18 Objective 1 – to favourably consider proposals to extend existing dwellings subject to the protection of residential and visual amenities and compliance with standards set out in Chapter 11 Implementation and the guidance set out in South Dublin County Council House Extension Design Guide 2010.

### 5.2. **Natural Heritage Designations**

5.2.1. None of relevance.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The appeal is lodged by Frank, Martina and David Kelly, No.1 Taylors Lane, the adjacent property to the west of the appeal site. It includes a copy of the submission made to the planning authority on the application. The main grounds can be summarised as follows:

- Queries raised in relation to the validity of the application.
- The development would devalue the appellants property by creating a terracing effect and providing a poor visual representation. In this it would be contrary to Policy H18, Objective 1 and the South Dublin County Council House Extension Design Guide and which specifically refers to the retention of a gap between neighbouring properties to avoid a terraced effect.
- The submission includes a checklist of how various design elements of the proposed extension fail to adhere to the design guide (see copy of document submitted to the planning authority).
- The proposed extension would eliminate access to essential utilities servicing the appellants house, namely ventilation units serving a downstairs bathroom and kitchen.
- By reference to the further information proposal the applicants neither sought nor got the appellants approval to undertake any works to their property. Approval would not be forthcoming to the proposal as currently presented.
- Notwithstanding the reference in the planning authority's decision to section 34(13) of the Act a query is raised as to how the planning authority can adjudicate on an application where sufficient legal title to undertake the works has not been established or where it is self-evident that the works would directly hinder a third party's rights.
- Ongoing maintenance of the appellants eaves, that would overhang the proposed extension, would be impossible.

- The extension would result in the rear amenity space of the house not meeting minimum standards.
- The intended use of the extension is queried by reference to the proposed garage doors and the separate entrance/front door behind. The appellants concerns in this regard are not mitigated by the standard Condition 2 attached to the planning authority decision.
- The extension, protruding beyond the front building line (contrary to the Extension Design Guide) could potentially compromise the structural integrity of the appellants glass front porch. It would give rise to a poor visual representation and, by virtue of the south facing orientation, could give rise to overshadowing.

## 6.2. Applicant Response

None received.

## 6.3. Planning Authority Response

Confirms decision – reference to planners report.

## 6.4. Observations

None received.

## 7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings:

- Design
- Direct impacts on the adjacent (appellants) property
- Use and amenity space
- Validity of application

- Appropriate Assessment

## 7.2. Design

- 7.2.1. As noted the appellants make extensive reference to the South Dublin County Council House Extension Design Guide 2010 in relation to this issue.
- 7.2.2. The first thing to note is that, by definition, this document is for guidance purposes only and is not intended to be prescriptive. It suggests good practice but also acknowledges that each planning application is assessed on its own merits.
- 7.2.3. The appellants focus, in particular, on the fact that the proposed extension would abutt their house with no gap between the properties, thus creating a terraced effect in contravention of the guidelines. However, while the guidelines (pages 17 and 18 of that document refer) do generally advise against such an approach, they also recognise that it may not always be possible or practical to provide for a gap. It is also the case that the guidelines, in referring to side extensions, seem mostly to be concerned with two storey extensions between houses and related roof profile issues.
- 7.2.4. I am satisfied, given the site layout and house type in this instance, that the proposed single storey side extension is a reasonable response in design terms. The flat roof and parapet is broadly similar to other side extensions to these houses, including the extension to the side of the appellants house, and the projection forward, at 1.3m in depth, is not excessive and, again, is reasonably consistent, in this respect, with front extensions to other nearby houses, including the porch extension at the front of the appellants house.
- 7.2.5. I do not consider that there is any basis to the appellants submission that the proposal would devalue their property.
- 7.2.6. I consider, therefore, that the appeal should not be upheld in relation to the issue of design.

## 7.3. Direct Impacts on Adjacent (Appellants) property

- 7.3.1. This refers to; the impact of the proposed extension on ventilation units and an electricity meter box to the side of the appellants house; the issue of access to the appellants eaves for maintenance; and the issues of structural integrity and overshadowing in relation to the appellants porch.

- 7.3.2. The ventilation units in question comprise a flush wall vent and a short vent pipe/stack, serving a bathroom and kitchen respectively. The electricity meter box is a standard flush fitting. Attached photographs refer.
- 7.3.3. In response to the request for further information by the planning authority the applicants proposed extending the two vents to eaves height on the appellants house – Drg. No.1 refers.
- 7.3.4. Subject to an overall design based assessment matters to do with boundary detailing and adjoining building tie-in are not normally dealt with under the planning code and are left to be worked out between property owners. From a planning perspective the matter of consent in such cases is effectively dealt with by reference to section 34(13) of the Act and which provides that development cannot be carried out solely on foot of a planning permission. Other consents may be required. Such consents include, in particular, the legal interest in the property concerned to carry out the works.
- 7.3.5. This application is somewhat unusual in that the proposed extension clearly necessitates the applicants carrying out works directly to the appellants property. The further information submission to the planning authority indicates the works required to the air extraction vents. Further works would obviously be required to the electricity meter box. It is also the case that the appellants consent for such works is not forthcoming. I note also the reference in the planning authority's planning report to likely enforcement difficulties arising in this situation.
- 7.3.6. Given the intrusive nature of the works that are required and the clear evidence before the board that the necessary consent from the affected party has not been granted I am inclined to the view, in this instance, that the applicants do not have sufficient legal interest for planning purposes and that the proper decision for the Board to make is to refuse permission on these grounds.
- 7.3.7. The proposed development could of course be revisited should the applicants obtain the necessary consents.
- 7.3.8. The issue of access to the appellants eaves for maintenance purposes, while also a potential area for dispute/inconvenience, is not one, in my view, that should prevent a planning permission being granted. Further, I do not see any basis for addressing potential structural issues in relation to the appellants porch under the planning code.

While the extension would have some shadowing effect on the porch I do not consider that it would be excessive.

#### **7.4. Use and Amenity Space**

- 7.4.1. In terms of use the application is presented simply as an extension to the existing house and I do not consider that there is any substantive basis to question the bona fides of the proposal in this regard. Contrary to the appellants assertion I do consider that the standard condition, requiring the joint use of the extension and the house as a single dwelling unit, would be sufficient in the event of a grant of permission.
- 7.4.2. The issues raised about reduced amenity space are not well founded. The standards referred to essentially relate to new build and establish a baseline within new housing schemes that ensures a good standard of residential amenity. Subsequent extensions can always arise and even exempted development might take place that significantly reduces amenity space.

#### **7.5. Validity of Application**

- 7.5.1. The matters raised relate to the detail of the application drawings as submitted to the planning authority and the planning authority's procedures in dealing with the application. These are not matters on which the Board can adjudicate. The appeal before the Board is valid and the third party's right to participate is given full effect.

#### **7.6. Appropriate assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development, being a minor residential extension in an established 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.

### **8.0 Recommendation**

- 8.1. I recommend that permission be refused for the following reasons and considerations.



## 9.0 Reasons and Considerations

- 9.1. Having regard to the necessity to carry out works to the adjoining property and to the evidence that the owners of that property are unwilling to consent to such works the Board is not satisfied that the applicants have sufficient legal interest to carry out the proposed development. To grant permission, therefore, would be contrary to the proper planning and sustainable development of the area.

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Brendan Wyse  
Assistant Director of Planning

1 August 2017